

*The Code of Civil Procedure Bill.**(The First Schedule.—Appendix G.—Appeal, Reference and Review.)*

No. 10.

APPLICATION TO APPEAL IN FORMÂ PAUPERIS. (O. 44, r. 1.)

(Title.)

I, _____ the above-named present the accompanying memorandum of appeal from the decree in the above suit and apply to be allowed to appeal as a pauper.

Annexed is a full and true schedule of all the moveable and immoveable property belonging to me with the estimated value thereof.

Dated the _____ day of _____ 19 .

(Signed.)

Note.—Where the application is by the plaintiff he should state whether he applied and was allowed to sue in the Court of first instance as a pauper.

No. 11.

NOTICE OF APPEAL IN FORMÂ PAUPERIS. (O. 44, r. 1.)

(Title.)

WHEREAS the above-named _____ has applied to be allowed to appeal as a pauper from the decree in the above suit dated the _____ day of _____ 19 and whereas the _____ day of _____ 19 has been fixed for hearing the application, notice is hereby given to you that if you desire to show cause why the applicant should not be allowed to appeal as a pauper an opportunity will be given to you of doing so on the afore-mentioned date.

Given under my hand and the seal of the Court, this _____ day of _____ 19 .

Judge.

No. 12.

NOTICE TO SHOW CAUSE WHY A CERTIFICATE OF APPEAL TO THE KING IN COUNCIL SHOULD NOT BE GRANTED. (O. 45, r. 3.)

(Title.)

To _____

TAKE notice that _____ has applied to this Court for a certificate that as regards amount or value and nature the above case fulfils the requirements of section 110 of the Code of Civil Procedure or that it is otherwise a fit one for appeal to His Majesty in Council.

The _____ day of _____ 19 is fixed for you to show cause why the Court should not grant the certificate asked for.

Given under my hand and the seal of the Court, this _____ day of _____ 19 .

Registrar.

No. 13.

NOTICE TO RESPONDENT OF ADMISSION OF APPEAL TO THE KING IN COUNCIL. (O. 45, r. 8.)

(Title.)

To _____

WHEREAS _____ in the above case has furnished the security and made the deposit required by Order XLV, rule 7, of the Code of Civil Procedure :

Take notice that the appeal of the said _____ to His Majesty in Council has been admitted on the _____ day of _____ 19 .

Given under my hand and the seal of the Court, this _____ day of _____ 19 .

Registrar.

No. 14.

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANTED. (O. 47, r. 4.)

(Title.)

To _____

TAKE notice that _____ has applied to this Court for a review of its decree passed on the _____ day of _____ 19 in the above case. The _____ day of _____ 19 is fixed for you to show cause why the Court should not grant a review of its decree in this case.

Given under my hand and the seal of the Court, this _____ day of _____ 19 .

Judge.

*The Code of Civil Procedure Bill.**The First Schedule.—Appendix H.—Miscellaneous.)*

APPENDIX H.

MISCELLANEOUS.

No. 1.

AGREEMENT OF PARTIES AS TO ISSUES TO BE TRIED. (O. 14, r. 6.)

(Title.)

WHEREAS we, the parties in the above suit, are agreed as to the question of fact [or of law] to be decided between us and the point at issue between us is whether a claim founded on a bond, dated the _____ day of _____ 19____ and filed as Exhibit _____ in the said suit, is or is not beyond the statute of limitation (or state the point at issue whatever it may be):
We therefore severally bind ourselves that, upon the finding of the Court in the negative [or affirmative] of such issue _____ will pay to the said _____ the sum of _____ Rupees (or such sum as the Court shall hold to be due thereon) and 1, the said _____ will accept the said sum of Rupees _____ (or such sum as the Court shall hold to be due) in full satisfaction of my claim on the bond aforesaid [or, that upon such finding 1, the said _____ will do or abstain from doing, etc., etc.].

Plaintiff.

Defendant.

Witnesses.—

1,

2,

Dated the _____

day of _____

9 .

No. 2.

NOTICE OF APPLICATION FOR THE TRANSFER OF A SUIT TO ANOTHER COURT FOR TRIAL. (SECTION 24.)

In the Court of the District Judge of _____ No. _____

of 19 ____ .

To _____

Whereas an application dated the _____ day of _____ 19____ has been made to this Court by _____ the _____ In Suit No. _____ of _____ to _____ now pending in the Court of the _____ at _____ is defendant for the transfer of the suit for trial to the Court of the _____ at _____ is _____

You are hereby informed that the _____ day of _____ 19____ has been fixed for the hearing of the application, when you will be heard if you desire to offer any objection to it.

Given under my hand and the seal of the Court, this _____ day of _____ 19 ____ .

Judge.

No. 3.

NOTICE OF PAYMENT INTO COURT. (O. 21, r. 2.)

(Title.)

Take notice that the defendant has paid into Court Rs. _____ and says that that sum is sufficient to satisfy the plaintiff's claim in full.

X Y, Pleader for the defendant.

To Z, Pleader for the plaintiff.

No. 4.

NOTICE TO SHOW CAUSE. (GENERAL FORM.)

(Title.)

To _____

Whereas the above-named _____ has made application to this Court that _____ You are hereby warned to appear in this Court in person or by a pleader duly instructed on the _____ day of _____ 19____ at _____ o'clock in the forenoon to show cause against the application, failing wherein, the said application will be heard and determined ex parte.

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of the parties or their agents if in attendance, who will be at liberty to question the witness on the points specified; and you are further requested to make return of such evidence as soon as it may be taken.

Process to compel the attendance of the witness will be issued by any Court having jurisdiction on your application.

A sum of Rs. , being your fee in the above, is herewith forwarded.

Given under my hand and the seal of the Court, this day of

19

Judge.

No. 8.

LETTER OF REQUEST. (O. 26, r. 5.)

(Title.)

(Heading:—To the President and Judges of, etc., etc., or as the case may be.)

Whereas a suit is now pending in the
in which A. B. is plaintiff and C. D. is defendant; And in the said suit the plaintiff claims

(abstract of claim.)

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say:

E. F., of
G. H., of
I. J., of

and

And it appearing that such witnesses are resident within the jurisdiction of your honourable Court; Now I , as the of the said Court, have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said Court, you, as the President and Judges of the said , or some one or more of you, will be pleased to summon the said witness (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (or *visu voce*) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure and to return the same, together with such request in writing, if any, for the examination of other witnesses to the said Court.

(Note.—If the Request is directed to a Foreign Court, the words "through His Majesty's Secretary of State for Foreign Affairs for transmission" should be inserted after the words "other witnesses" in the last line of this form.)

No. 9.

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS. (O. 26, rr. 9, 11.)

(Title.)

To

Whereas it is deemed requisite, for the purposes of this suit, that a commission for should be issued; You are hereby appointed

Commissioner for the purpose of

Process to compel the attendance before you of any witnesses, or for the production of any documents whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Rs. , being your fee in the above, is herewith forwarded

Given under my hand and the seal of the Court this

day of

19

Judge.

V W

The Code of Civil Procedure Bill.
(The First Schedule.—Appendix H.—Miscellaneous.)

No. 10.

COMMISSION TO MAKE A PARTITION (O. 26, r. 13.)

(Title.)

To

Whereas it is deemed requisite for the purposes of this suit that a commission should be issued to make the partition or separation of the property specified in, and according to the rights as declared in, the decree of this Court, dated the _____ day of _____ 19____; You are hereby appointed Commissioner for the said purpose and are directed to make such inquiry as may be necessary, to divide the said property according to the best of your skill and judgment in the shares set out in the said decree, and to allot such shares to the several parties. You are hereby authorized to award sums to be paid to any party by any other party for the purpose of equalizing the value of the shares.

Process to compel the attendance before you of any witness, or for the production of any documents whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Rs. _____, being your fee in the above, is herewith forwarded.

Given under my hand and the seal of the Court, this _____ day of _____ 19____.

Judge.

No. 11.

NOTICE TO MINOR DEFENDANT AND GUARDIAN. (O. 32, r. 3.)

(Title.)

To

Minor Defendant.

Natural Guardian.

Whereas an application has been presented on the part of the plaintiff in the above suit for the appointment of a guardian for the suit to the minor defendant, you, the said minor, and you (1) are hereby required to take

(1) Here insert the name of guardian,
notice that unless within _____ days from the service upon you of this notice, an application is made to this Court for the appointment of you (1) _____ or of some friend of you, the minor, to act as guardian for the suit, the Court will proceed to appoint some other person to act as a guardian to the minor for the purposes of the said suit.

Given under my hand and the seal of the Court, this _____ day of _____ 19____.

Judge.

No. 12.

NOTICE TO OPPOSITE PARTY OF DAY FIXED FOR HEARING EVIDENCE OF PAUPERISM. (O. 33, r. 6.)

(Title.)

To

Whereas _____ has applied to this Court for permission to institute a suit against _____ in form of pauperis under Order XXXIII of the Code of Civil Procedure; and whereas the Court sees no reason to reject the application; and whereas the _____ day of _____ 19____ has been fixed for receiving such evidence as the applicant may adduce in proof of his pauperism and for bearing any evidence which may be adduced in disproof thereof:

Notice is hereby given to you under rule 6 of Order XXXIII that in case you may wish to offer any evidence to disprove the pauperism of the applicant, you may do so on appearing in this Court on the said _____ day of _____ 19____.

Given under my hand and the seal of the Court, this _____ day of _____ 19____.

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(The First Schedule.—Appendix H.—Miscellaneous.)

No. 13.

NOTICE TO SURETY OF HIS LIABILITY UNDER A DECREE. (Section 145.)

(Title.)

To _____ did on _____ become
WHEREAS you liable as surety for the performance of any decree which might be passed against the said
defendant in the above suit; and whereas a decree was passed on the _____ against the said defendant for the
day of _____, and whereas application has been made for execution
payment of _____
of the said decree against you.

Take notice that you are hereby required on or before the _____ day of _____
19____ to show cause why the said decree should
not be executed against you, and if no sufficient cause shall be, within the time specified, shown to the
satisfaction of the Court, an order for its execution will be forth with issued in the terms of the said
application.

Given under my hand and the seal of the Court, this _____ day of _____
19____

Judge

The Code of Civil Procedure Bill.
(*The First Schedule.—Appendix H.*)

[illegible]

The Code of Civil Procedure Bill.
(*The Second Schedule.— Arbitration.*)

The Second Schedule

ARBITRATION.

Arbitration in Suits.

- [S. 506.] 2. (1) Where in any suit all the parties interested agree that any matter in difference between them shall be referred to arbitration, they may, at any time before judgment is pronounced, apply to the Court for an order of reference.
- Parties to suit may apply for order of reference.
- (2) Every such application shall be in writing and shall state the matter sought to be referred.
- [S. 507.] Appointment of arbitrator. 3. The arbitrator shall be appointed in such manner as may be agreed upon between the parties.
- [S. 508.] 3. (1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the making of the award, and shall specify such time in the order.
- Order of reference.
- (2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this schedule, deal with such matter in the same suit.
- [S. 509.] 4. (1) Where the reference is to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators—
- Where reference is to two or more, order to provide for difference of opinion.
- (a) by the appointment of an umpire; or
- (b) by declaring that, if the majority of the arbitrators agree, the decision of the majority shall prevail; or
- (c) by empowering the arbitrators to appoint an umpire; or
- (d) otherwise as may be agreed between the parties or, if they cannot agree, as the Court may determine.
- (2) Where an umpire is appointed, the Court shall fix such time as it thinks reasonable for the making of his award in case he is required to act.
- [S. 510.] 5. (1) In any of the following cases, namely:—
- Power of Court to appoint arbitrator in certain cases.
- [S. 507 (2).] (a) where the parties cannot agree within a reasonable time with respect to the appointment of an arbitrator, or the person appointed refuses to accept the office of arbitrator, or
- (b) where an arbitrator or umpire—
- [S. 510.] (i) dies, or
- (ii) refuses or neglects to act or becomes incapable of acting, or
- (iii) leaves British India in circumstances showing that he will probably not return at an early date, or
- [S. 511.] (c) where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so,
- any party may serve the other party or the arbitrators, as the case may be, with a written notice to appoint an arbitrator or umpire.
- (2) If, within seven clear days after such notice has been served or such further time as the Court may in each case allow, no arbitrator or no umpire is appointed, as the case may be, the Court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator or umpire or make an order superseding the arbitration, and in such case shall proceed with the suit.
- [S. 512.] 6. Every arbitrator or umpire appointed under paragraph 4 or paragraph 5 shall have the like powers as if his name had been inserted in the order of reference.
- Powers of arbitrator or umpire appointed under paragraph 4 or 5.
- [S. 513.] 7. (1) The Court shall issue the same processes to the parties and witness whom the arbitrator or umpire desires to examine, as the Court may issue in suits tried before it.
- Summoning witnesses and default.
- (2) Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.
- [S. 514.] 8. Where the arbitrators or the umpire cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either allow further time, and from time to time, either before or after the expiration of the period fixed for the making of the award, enlarge such period; or may make an order superseding the arbitration, and in such case shall proceed with the suit.
- Extension of time for making award.
- [S. 515.] 9. Where an umpire has been appointed, he may enter on the reference in the place of the arbitrators,—
- Where umpire may arbitrate in lieu of arbitrators.
- (a) if they have allowed the appointed time to expire without making an award, or
- (b) if they have delivered to the Court or to the umpire a notice in writing stating that they cannot agree.
- [S. 516.] 10. Where an award in a suit has been made, the persons who made it shall sign it and cause it to be filed in Court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.
- Award to be signed and filed.
- [S. 517.] 11. Upon any reference by an order of the Court, the arbitrator or umpire may, with the leave of the Court, state the award as to the whole or any part thereof in the form of a special case for the opinion of
- Statement of special case by arbitrators or umpire.

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(The Second Schedule.—Arbitration.)

the Court, and the Court shall deliver its opinion thereon, and shall order such opinion to be added to and to form part of the award.

Power to modify or correct award.

12. The Court may, by order, modify or correct an award,— [S. 518.]

(a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or

(c) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

13. The Court may also make such order as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them. [S. 519.]

Order as to costs of arbitration.

Where award or matter referred to arbitration may be remitted.

14. The Court may remit the award or any matter referred to arbitration to the re-consideration of the same arbitrator or umpire, upon such terms as it thinks fit,— [S. 520.]

(a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, unless such matter can be separated without affecting the determination of the matters referred; or

(b) where the award is so indefinite as to be incapable of execution; or

(c) where an objection to the legality of the award is apparent upon the face of it.

15. (1) An award remitted under paragraph 14 becomes void on failure of the arbitrator or umpire to re-consider it. But no award shall be set aside except on one of the following grounds, namely:— [S. 521.]

Grounds for setting aside award.

(a) corruption or misconduct of the arbitrator or umpire;

(b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;

(c) the award having been made after the issue of an order by the Court superseding the arbitration and proceeding with the suit or after the expiration of the period allowed by the Court, or being otherwise invalid.

(2) Where an award becomes void or is set aside under clause (1), the Court shall make an order superseding the arbitration and in such case shall proceed with the suit.

16. (1) Where the Court sees no cause to remit the award or any of the matters referred to arbitration for re-consideration in manner aforesaid, and no application has been made to set aside the award, or the Court has refused such application, the Court shall, after the time for making such application has expired, proceed to pronounce judgment according to the award. [S. 522.]

Judgment to be according to award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

Order of reference on agreements to refer.

17. (1) Where any persons agree in writing that any difference between them shall be referred to arbitration, the parties to the agreement, or any of them, may apply to any Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court. [S. 523.]

Application to file in Court agreement to refer to arbitration.

(2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

(3) On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement, other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed in accordance with the provisions of the agreement or, if there is no such provision and the parties cannot agree, the Court may appoint an arbitrator.

18. Where any party to any agreement to refer to arbitration, or any person claiming under him, institutes any suit against any other party to the agreement, or any person claiming under him, in respect of any matter agreed to be referred, any party to such suit may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to the Court to stay the suit; and the Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement to refer to arbitration, and that the applicant was, at the time when the suit was instituted and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the suit. [Cf. IX, s. 100, n. 10.]

Stay of suit where there is an agreement to refer to arbitration.

(5) The foregoing provisions, so far as they are consistent with any agreement filed under paragraph 17, shall be applicable to all proceedings under the order of reference made by the Court under that paragraph, and to the award and to the decree following thereon. [S. 524.]

Provisions applicable to proceedings under paragraph 17.

Arbitration without the intervention of a Court.

19. (1) Where any matter has been referred to arbitration without the intervention of a Court, and an award has been made thereon, any person interested in the award may apply to any Court having jurisdiction over the subject-matter of the award that the award be filed in Court. [S. 525.]

Filing award in matter referred to arbitration without intervention of Court.

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(The Second Schedule.—Arbitration.)

(2) The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants:

(3) The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

[S. 526.]

21. (1) Where the Court is satisfied that the matter has been referred to arbitration and that an award has been made thereon and where no ground such as is mentioned or referred to in paragraph 14 or paragraph 15 is proved, the Court shall order the award to be filed and shall proceed to pronounce judgment according to the award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award.

[IX of 1899,
s. 3.]

22. The last thirty-seven words of section 21 of the Specific Relief Act, 1877, shall not apply to any agreement to refer to arbitration, or to any award, to which the provisions of this schedule apply.

(New.)

23. The forms set forth in the Appendix, with such variations as the circumstances of each case require, shall be issued for the respective purposes therein mentioned.

Forms.

APPENDIX.

No. 1.

APPLICATION FOR AN ORDER OF REFERENCE.

(Title of suit.)

1. This suit is instituted for (*state nature of claim*).
2. The matter in difference between the parties is (*state matter of difference*).
3. The applicants being all the parties interested have agreed that the matter in difference between them shall be referred to arbitration.
4. The applicants therefore apply for an order of reference.

A. B.

C. D.

Dated the day of 19 .

NOTE.—If the parties are agreed as to the arbitrators it should be so stated.

No. 2.

ORDER OF REFERENCE.

(Title of suit.)

Upon reading the application presented on the day of 19 it is ordered that the following matter in difference arising in this suit, namely:—

be referred for determination to X and Y or in case of their not agreeing then to the determination of Z, who is hereby appointed to be umpire; and such arbitrators are to make their award in writing on or before the day of 19 and in case of the said arbitrators not agreeing in an award the said umpire is to make his award in writing within months after the time during which it is within the power of the arbitrators to make an award shall have ceased.

Liberty to apply.

Given under my hand and the seal of the Court, this day of 19 .

Judge.

No. 3.

ORDER FOR APPOINTMENT OF NEW ARBITRATOR.

(Title of suit.)

Whereas by an order, dated the day of 19 [state order of reference and death, refusal, etc., of arbitrator], it is by consent ordered that Z be appointed in the place of X

Y W

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(deceased, or as the case may be) to act as arbitrator with Y, the surviving arbitrator, under the said order; and it is ordered that the award of the said arbitrators be made on or before the day of 19 .

Given under my hand and the seal of the Court, this

day of

19 .

Judge.

No. 4.

SPECIAL CASE.

(Title of suit.)

In the matter of an arbitration between A. B. of and C. D. of the following special case is stated for the opinion of the Court :—

[Here state the facts concisely in numbered paragraphs.]

The questions of law for the opinion of the Court are :—

First, whether

Secondly, whether

X.
Y.

Dated the

day of

19 .

No. 5.

AWARD.

(Title of suit.)

In the matter of an arbitration between A. B. of and C. D. of :—

WHEREAS in pursuance of an order of reference made by the Court of dated the day of 19 the following matter in difference between A. B. and C. D., namely,

has been referred to us for determination ;

Now we, having duly considered the matter referred to us, do hereby make our award as follows :—

We award—

(1) that

(2) that

Dated the

day of

19 .

X.
Y.

*The Code of Civil Procedure Bill.**(The Third Schedule.—Execution of Decrees by Collectors.)***The Third Schedule.****EXECUTION OF DECREES BY COLLECTORS.**

[S. 321.]

Powers of Collector.

1. Where the execution of a decree has been transferred to the Collector under section 68, he may—

- (a) proceed as the Court would proceed when the sale of immoveable property is postponed in order to enable the judgment-debtor to raise the amount of the decree; or
- (b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium or by mortgaging, the whole or any part of the property ordered to be sold; or
- (c) sell the property ordered to be sold or so much thereof as may be necessary.

[S. 322.]

2. Where the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for the payment of money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if, after such inquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.

*** Procedure of Collector in special cases.**

[S. 323A.]

3. (1) In any such case as is referred to in paragraph 2, the Collector shall publish a notice, allowing a period of sixty days from the date of its publication for compliance and calling upon—

- (a) every person holding a decree for the payment of money against the judgment-debtor capable of execution by sale of his immoveable property and which such decree-holder desires to have so executed, and every holder of a decree for the payment of money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder;
- (b) every person having any claim on the said property to submit to the Collector a statement of such claim, and to produce the documents (if any) by which it is evidenced.
- (c) Such notice shall be published by being affixed on a conspicuous part of the court-house of the Court which made the original order for sale, and in such other places (if any) as the Collector thinks fit; and where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

[S. 323B.]

4. (1) Upon the expiration of the said period, the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such inquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immoveable property, and may, from time to time, adjourn such hearing and inquiry.

(2) Where there is no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

(3) Where any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order for sale, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof is within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector, who shall then draw up a statement as above provided in accordance with such decision.

[S. 323C.]

5. The Collector may, instead of himself issuing the notices and holding the inquiry required by paragraphs 3 and 4, draw up a statement specifying the circumstances of the judgment-debtor and of his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court; and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by paragraphs 3 and 4 and transmit such statement to the Collector.

[S. 323D.]

6. The decision by the Court of any dispute arising under paragraph 4 or paragraph 5 shall, as between the parties thereto, have the force of and be appealable as a decree.

Effect of decision of Court as to dispute.

[S. 323E.]

7. (1) Where the amount to be recovered and the property available have been determined as provided in paragraph 4 or paragraph 5, the Collector may,—

Scheme for liquidation of decrees for payment of money.

- (a) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property; or,
- (b) if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale, raise such amount and interest (notwithstanding the original order for sale) —
 - (i) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property; or
 - (ii) by mortgaging the whole or any part of such property; or
 - (iii) by selling part of such property; or
 - (iv) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale; or
 - (v) partly by one of such modes, and partly by another or others of such modes.
- (c) For the purpose of managing the whole or any part of such property the Collector may exercise all the powers of its owner.

*The Code of Civil Procedure Bill.**(The Third Schedule—Execution of Decrees by Collectors.)*

- (3) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this clause, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

- (4) In proceeding under this paragraph the Collector shall be subject to such rules consistent with this Act as may, from time to time, be made in this behalf by the Local Government.

8. Where, on the expiration of the letting or management under paragraph 7, the amount to be recovered

[S. 324.]

Recovery of balance (if any) after letting or management.

has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks from the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and, if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

9. (1) The Collector shall, from time to time, render to the Court which made the original order for sale an account of all monies which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this schedule, and shall hold the balance at the disposal of the Court.

[S. 324A.]

(2) Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and, if the Collector so directs, the expenses of any witnesses summoned by him.

- (3) The balance shall be applied by the Court—

(a) in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit; and

(b) where the Collector has proceeded under paragraph 1, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property, or otherwise as the Court may under section 73 direct; or

(c) where the Collector has proceeded under paragraph 2,—

(i) in keeping down the interest on incumbrances on the property;

(ii) where the judgment-debtor has no other sufficient means of subsistence, in providing for his subsistence to such amount as the Court thinks fit; and

(iii) in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered.

(4) No other holder of a decree for the payment of money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied, and the residue (if any) shall be paid to the judgment-debtor or such other person as the Court directs.

10. Where the Collector sells any property under this schedule, he shall put it up to public auction in one or more lots, as he thinks fit, and may—

[S. 325.]

Sale how to be conducted.

(a) fix a reasonable reserved price for each lot;

(b) adjourn the sale for a reasonable time whenever, for reasons to be recorded, he deems the adjournment necessary for the purpose of obtaining a fair price for the property;

(c) buy in the property offered for sale, and re-sell the same by public auction or private contract, as he thinks fit.

11. (1) So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable

[S. 325A.]

Restrictions as to alienation by judgment-debtor or his representative, and prosecution of remedies by decree-holders.

property, or any part thereof, any of the powers or duties conferred or imposed on him by paragraphs 1 to 10, the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for the payment of money.

(2) During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under paragraph 7.

(3) The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this paragraph in respect of any remedy of which the decree-holder has been temporarily deprived.

12. Where the property of which the sale has been ordered is situate in more districts than one, the

[S. 325B.]

Provision where property is in several districts.

powers and duties conferred and imposed on the Collector by paragraphs 1 to 10 shall be exercised and performed by such one of the Collectors of the said districts as the Local Government may by general rule or special order direct.

13. In exercising the powers conferred on him by paragraphs 1 to 10 the Collector shall have the

[S. 325C.]

Powers of Collector to compel attendance and production.

powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents.

The Code of Civil Procedure Bill.
(*The Fourth Schedule.—Enactments amended.*)

The Fourth Schedule.

(See section 155.)

ENACTMENTS AMENDED.

1	2	3	4
Year.	No.	Short title.	Amendment.
1870	VII	The Court-fees Act, 1870 . . .	<p>In article 1 of Schedule I, after the word "plaint" the words "written statement pleading a set-off or counter-claim" and after the word "Act" the words "or of cross-objection" shall be inserted.</p> <p>From article 11 of Schedule II the words "from an order rejecting a plaint or" shall be omitted.</p> <p>For the entry in the first column of Schedule II relating to article 19 the following entry shall be substituted, namely :—</p> <p>"Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure."</p>

The Code of Civil Procedure Bill.
(*The Fifth Schedule.—Enactments repealed.*)

The Fifth Schedule.

(See section 156.)

ENACTMENTS REPEALED.

1	2	3	4
Year.	No.	Subject or short title.	Extent of repeal.
<i>Acts of the Governor General in Council.</i>			
	VII	The Court-fees Act, 1870	Section 16, and article 15 of Schedule II.
1882	IV	The Transfer of Property Act 1882	Sections 85 to 90 inclusive, 92 to 94 inclusive, 96, 97, 99 and in section 100 the words "and all the provisions hereinbefore contained as to a mortgage instituting a suit for the sale of the mortgaged property."
"	XIV	The Code of Civil Procedure	The whole Act.
"	XV	The Presidency Small Cause Courts Act, 1882.	The last paragraph of section 3.
1888	VI	The Debtors Act, 1888	Sections 2 to 8.
"	VII	The Civil Procedure Code Amendment Act, 1888.	So much as is unrepealed, except section 1, section 65 and section 66, sub-sections (1), (3) and (4).
"	X	The Presidency Small Cause Courts Law Amendment Act, 1888.	So much as is unrepealed.
1890	VIII	The Guardian and Wards Act, 1890.	Section 53.
1891	XII	The Repealing and Amending Act, 1891.	So much as relates to Act XIV of 1882 and Act VII of 1888.
1892	VI	The Indian Limitation Act and Civil Procedure Code Amendment Act, 1892.	In the title and preamble the words "and the Code of Civil Procedure" and sections 2, 3 and 4.
1894	V	The Civil Procedure Code Amendment Act, 1894.	The whole Act.
1895	VII	The Punjab Laws Act Amendment Act, 1895.	Sections 1 and 2.
"	XIII	The Civil Procedure Code Amendment Act, 1895.	The whole Act.
1900	VI	The Lower Burma Courts Act, 1900.	So much of the schedules as relate to Act XIV of 1882.

J. M. MACPHERSON,

Secretary to the Government of India.

**Annexure to Bill to consolidate and amend the Law relating to the
Procedure of the Courts of Civil Judicature.**

Disposal of provisions of Act XIV of 1882.

Section of Act XIV of 1882.	Clause of Bill.	Order and Rule.
1	Clause 1.	
2		
"Chapter"	Omitted.	
"district"	Clauses 2 (4) and 3.	
"District Court"		
"pleader"	2 (15).	
"Government pleader"	2 (7).	
"Collector"	Omitted.	
"decree"	Clause 2 (2).	
"order"	2 (14).	
"judgment"	2 (9).	
"judge"	2 (8).	
"judgment-debtor"	2 (10).	
"decree-holder"	2 (3).	
"written"	Omitted.	
"signed"	Clause 2 (20).	
"foreign Court"	2 (5).	
"foreign judgment"	2 (6).	
"public officer"	2 (17).	
"Government"	Omitted.	

Section of Act XIV of 1881.	Clause of Bill.	Order and Rule.
3	Clauses 154, 156, 157, 158.	
4	Clause 4.	
4A	" 5.	
5	" 7.	
6, paras. (c) and (d) ...	Omitted.	
6, last para. ...	Clause 6.	
7	Cf. clause 4.	
8	Clause 8.	
9	Omitted.	
10	Omitted.	
11	Clause 9.	
12	" 10.	
13	" 11.	
Expln. VI. ...	" 14.	
14	" 13.	
15	" 15.	
16	" 16.	
16A	" 18.	
17	" 20.	
18	" 19.	
19	" 17.	
20	Omitted.	
21	Omitted.	
22	Clause 22, 23 (1).	
23	" 22, 23 (2).	
24, paras. 1 & 3 ...	" 22, 23 (3).	
24, para. 2 ...	Omitted.	
25	Clause 24.	
26 ... ..	.....	O. I, rr. 1, 4 (a).
27 ... ..	.....	" 2. 10 (1).

Section of Act XIV of 1882.	Clause of Bill.	Order and Rule.
28		O. I, rr. 3, 4 (b).
29		" r. 6.
30		" r. 8 (1).
31		" r. 9.
32		" rr. 8 (2), 10 (2), (3), (5), 11.
33		" r. 10 (4).
34		" r. 13.
35		" r. 12.
36		O. III, r. 1.
37		" r. 2.
38		" r. 3.
39		" r. 4.
40		" r. 5.
41		" r. 6.
42		O. II, r. 1.
43		" r. 2.
44		" rr. 4, 5.
45		" rr. 3, 6.
46	} Clause 16	Cf. O. II, rr. 6, 7.
47		O. IV, r. 1.
48		
49	Cf. clause 137	
50		O. VII, rr. 1, 2, 4, 5, 6.
51		O. VI, rr. 14, 15 (1).
52		" r. 15 (2), (3).
53		" r. 17 ; cf. O. VII, r. 11.
54		O. VII, r. 11 ; cf. O. VI, r. 18.
55		" r. 12.
56		" r. 13.
57		" r. 10.
58		" r. 9.
58, last para.		O. IV, r. 2.
59		O. VII, r. 14.
60		" r. 15.
61		" r. 16.
62		" r. 17.

Section of Act XIV of 1882.			Clause of Bill.	Order and Rule.
63	...	...	Clause 17	O. VII, r. 18.
64	...	...		O. V, r. 1.
65	...	...		" r. 2.
66	...	...		" r. 3.
67	...	...		" r. 4.
68	...	...		" r. 5.
69	...	...		" r. 6.
70	...	...		" r. 7.
71	...	...		" r. 8.
72	...	...		" r. 9.
73	...	...		" r. 10.
74	...	...		" r. 11.
75	...	...		" r. 12.
76	...	...		" r. 13.
77	...	...		" r. 14.
78	...	...		" r. 15.
79	...	...		" r. 16.
80	...	...		" r. 17.
81	...	...		" r. 18.
82	...	...		" r. 19, 20 (1).
3	...	...	Clause 18	" r. 20 (2).
84	...	...		" r. 20 (3).
85	...	...		" r. 21, 23.
86	...	...		" r. 22.
87	...	...		} r. 24, 29.
88	...	...
89	...	...		" r. 25.
90	...	...		" r. 26.
91	...	...		" r. 30 (1), (2).
92	...	...		" r. 30 (3).
93	...	...		O. XLVIII, r. 1.
94	...	...	Clause 142	" r. 2.
95	...	...	Clause 143	...
96	...	...		O. IX, r. 1.
97	...	...		" r. 2.
98	...	...		" r. 3.

Section of Act XIV of 1882.	Class of Bill.	Order and Rule.
99 ...	Omitted.	O. IX, r. 4.
99A ...		" r. 5.
100 ...		" r. 6.
101 ...		" r. 7.
102 ...		" r. 8.
103 ...		" r. 9.
104 ...		O. IX, r. 10.
105 ...		" r. 11.
106 ...		" r. 12.
107 ...		" r. 13.
108 ...		" r. 14.
109 ...		O. VIII, r. 1.
110 ...		" r. 6.
111 ...		" r. 9.
112 ...		" r. 10.
113 ...		Cf. O. VI, r. 2.
114 ...		" r. 14, 15.
115 ...		r. 16, 17.
116 ...		O. X, r. 1.
117 ...		" r. 2.
118 ...		" r. 3.
119 ...		" r. 4.
120 ...		O. XI, r. 1.
121 ...		Cf. O. XLVIII, r. 2.
122 ...		O. XI, r. 3.
123 ...		" r. 5.
124 ...		" r. 6.
125 ...		" r. 8.
126 ...		" r. 11.
127 ...		O. XII, r. 2.
128 ...		O. XI, r. 12, 13.
129 ...		" r. 14.
130 ...		" r. 15.
131 ...		" r. 17.
132 ...		" r. 18 (1).
133 ...		

Section of Act XIV of 1882.	Clause of Bill.	Order and Rule.
134		O. XI, r. 18 (2).
135		" r. 20.
136		" r. 21.
137		O. XIII, r. 10.
138		" r. 1 (1).
139		" r. 3.
140		" rr. 1 (2), 3.
141		" r. 4.
141A		" r. 5.
142		" r. 6.
142A		" r. 7.
143		" r. 8.
144		" r. 9.
145		" r. 12.
146		O. XIV, rr. 1, 2.
147		" r. 3.
148		" r. 4.
149		" r. 5.
150		" r. 6.
151		" r.
152		O. XV, r. 1.
153		" r. 3.
154		" r. 3.
155		" r. 4.
156		O. XVII, r. 1.
157		" r. 2.
158		" r. 3.
159		O. XVI, r. 1.
160		" r. 2.
161		" r. 3.
162		" r. 4.
163		" r. 5.
164		" r. 6.
165		" r. 7.
166		" r. 8.
167		" r. 9.

Section of Act XIV of 1882.	Clause of Bill.	Order and Rule.
168	O. XVI, r. 10.
169	" r. 11.
170	" r. 12.
171	" r. 13.
172	" r. 14.
173	" r. 15.
174	" r. 16.
175	} " rr. 10 to 13, 17, 18.
176	" r. 19.
177	" r. 20.
178	" r. 21.
179	O. XVIII, rr. 1, 2 (1).
180	" rr. 2 (2), (3), 3.
181	" r. 4.
182	" r. 5.
183	" r. 6.
184	" r. 8.
185	" r. 9.
185A, first and second paras. ...	Clause 138	...
185A, third para.	O. XVIII, r. 7.
186	" r. 10.
187	" r. 11.
188	" r. 12.
189	" r. 13.
190	" r. 14.
191	" r. 15.
192	" r. 16.
193	" r. 17.
194	O. XIX, r. 1.
195	" r. 2.
196	" r. 3.
197 ...	Clause 139	...
198 ...	33	O. XX, r. 1.
199	" r. 2.
200
201 ...	Cf. clause 137	...

Section of Act XIV of 1882.	Clause of Bill.	Order and Rule.
202 ... ..	...	O. XX, r. 3.
203 ... ..	...	" r. 4.
204 ... ..	...	" r. 5.
205 ... ..	...	" r. 7.
206, first and second paras. ...	...	" r. 6.
206, third para. ...	Clause 152	...
207 ... ..	...	O. XX, r. 9.
208 ... ..	...	" r. 10.
209	Clause 34	...
210 ... ..	...	O. XX, r. 11.
211	} Clause 2 (12)	" r. 12.
212		" r. 13.
213 ... ..	...	" r. 14.
214 ... ..	...	" r. 15.
215 ... ..	...	" r. 16.
215A ... ..	...	" r. 19.
216 ... ..	...	" r. 20.
217 ... ..	...	" r. 20.
218	} Cf. clause 35	" r. 6 (3).
219		
220		
221		
222 ... ..	...
223, first para. ...	Clause 38	...
223, second and third paras. ...	" 39	...
223, fourth para. ...	" 41	...
223, fifth para. ...	...	O. XXI, r. 4.
223, sixth para. ...	...	" r. 5.
224 ... ..	...	" r. 6.
225 ... ..	...	" r. 7.
226 ... ..	...	" r. 8.
227 ... ..	...	" r. 9.
228	Clause 42	...
229	" 43	...
229A	" 45	...
229B	" 44	...

Section of Act XIV of 1882.	Clause of Bill.	Order and Rule.
230, first para. ....	.....	O. XXI, r. 10.
230, second para. ...	.....	" r. 21.
230, third and fourth paras. ...	Clause 48	.....
231 ...	.....	O. XXI, r. 15.
232 ...	.....	" r. 16.
233 ...	Clause 49	.....
234 ...	" 50	.....
235 ...	.....	O. XXI, r. 11 (2).
236 ...	.....	" r. 12.
237 ...	.....	" r. 13.
238 ...	.....	" r. 14.
239 ...	.....	" r. 26 (1), (2).
240 ...	.....	" r. 26 (3).
241 ...	.....	" r. 27.
242 ...	.....	" r. 28.
243 ...	.....	" r. 29.
244 ...	Clause 47	.....
245 ...	.....	O. XXI, r. 17.
245A ...	Clause 56	.....
245B ...	.....	O. XXI, r. 37.
246 ...	.....	" r. 18.
247 ...	.....	" r. 19.
248 ...	.....	" r. 22.
249 ...	.....	" r. 23.
250 ...	.....	" r. 24 (1).
251 ...	.....	" r. 24 (2), (3), 25 (1)
252 ...	Clause 52	.....
253 ...	Cf. clause 145	.....
254 ...	.....	O. XXI, r. 30.
255 ...	.....	" r. 42.
256 ...	.....	" r. 11 (1).
257 ...	.....	" r. 1.
257A ...	Omitted.	.....
258 ...	.....	O. XXI, r. 2.
259 ...	.....	" r. 31.
260 ...	.....	" r. 32.

Section of Act XIV of 1882.	Clause of Bill.	Order and Rule.
261		O. XXI, r. 34 (1) to (4).
262		" r. 34 (5).
263		" r. 35.
264		" r. 36.
265	Clause 54	
266	" 60	
267		O. XXI, r. 41.
268		" r. 46.
269		" r. 43.
270		" r. 51.
271	Clause 62	
272		O. XXI, r. 52.
273		" r. 53.
274		" r. 54.
275		" r. 55.
276	Clause 64	
277		O. XXI, r. 56.
278		" r. 58.
279		" r. 59.
280		" r. 60.
281		" r. 61.
282		" r. 62.
283		" r. 63.
284		" r. 64.
285	Clause 63	
286		O. XXI, r. 65.
287		" rr. 66, 70.
288	Omitted.	
289		O. XXI, r. 67.
290		" r. 68.
291		" r. 69.
292		" r. 73.
293		" r. 71.
294		" r. 72.
295	Clause 73	
296		O. XXI, r. 76.

Section of Act XIV of 1882.	Clause of Bill.	Order and Rule.
297	O. XXI, r. 77.
298	" r. 78.
299	" r. 79 (1).
300	" r. 79 (2).
301	" r. 79 (3).
302	" r. 80.
303	" r. 81.
304	" r. 82.
305	" r. 83.
306	" r. 84.
307	" r. 85.
308	" r. 86.
309	" r. 87.
310	" r. 88.
310A	" r. 89.
311	" r. 90.
312	" r. 92.
313	" r. 91.
314	" r. 92.
315	" r. 93.
316 ...	Clause 65	" r. 94.
317 ...	" 66	...
318	O. XXI, r. 95.
319	" r. 96.
320 ...	Clauses 68, 70 and 71	...
321 ...	The Third Schedule.	
322 ...		
322A ...		
322B ...		
322C ...		
322D ...		
323 ..		
324 ...		
324A ...		
325		
325A		

Section of Act XIV of 1882.	Clause of Bill.	Order and Rule.
325B ...	} The Third Schedule.	
325C ...		
326 ...	Clause 72	.....
327 ...	" 67	.....
328 ...		O. XXI, r. 97.
329 ...		" r. 98.
330 ...		" r. 98.
331 ...		" r. 99.
332 ...		" rr. 100, 101, 103.
333 ...		" r. 102.
334 ...		" rr. 97, 98.
335 ...		" rr. 97, 99, 103.
336 ...	Clause 55	.....
337 ...		O. XXI, r. 38.
337A ...		" r. 40.
338 ...	Clause 57	.....
339 ...		O. XXI, r. 39 (1) to (4)
340 ...		" r. 39 (5)
341 ...	} Clause 58	.....
342 ...		
343 ...		O. XXI, r. 25.
344—360A	Repealed by the Provincial Insolvency Act, 1907.	
361 ...		O. XXII, r. 1.
362 ...		" r. 2.
363 ...		" r. 3 (1).
365 ...		" r. 3 (1).
366 ...		" r. 3 (2).
367 ...		" r. 5.
368 ...		" r. 4.
369 ...		" r. 7.
370 ...		" r. 8.
371 ...		" r. 9 (1), (2).
372 ...		" r. 10.
372A ...		" r. 9 (3).

Section of Act XIV of 1882.	Clause of Bill.	Order and Rule.
373		O. XXIII, r. 1.
374		" r. 2.
375		" r. 3.
375A		" r. 4.
376		O. XXIV, r. 1.
377		" r. 2.
378		" r. 3.
379		" r. 4.
380		O. XXV, r. 1 (1), (3)
381		" r. 2.
382		" r. 1 (2).
383		O. XXVI, r. 1.
384		" r. 2.
385		" r. 3.
386	Clause 76	" r. 4.
387		" r. 5.
388		" r. 6.
389		" r. 7.
390		" r. 8.
391	Clause 78	
392		O. XXVI, r. 9.
393		" r. 10.
394		" r. 11.
395		" r. 12.
396		" r. 13, 14.
397		" r. 15.
398		" r. 16.
399		" r. 17.
400		" r. 18.
401		O. XXXIII, r. 1.
402	Omitted.	
403		O. XXXIII, r. 2.
404		" r. 3.
405		" r. 5.
406		" r. 4.

Section of Act XIV of 1882.	Clause of Bill.	Order and Rule.
407 ...	.....	O. XXXIII, r. 5.
408 ...	.....	" r. 6.
409 ...	.....	" r. 7.
410 ...	.....	" r. 8.
411 ...	.....	" r. 10.
412 ...	.....	" r. 11.
413 ...	.....	" r. 15.
414 ...	.....	" r. 9.
415 ...	.....	" r. 16.
416 ...	Clause 79	O. XXVII, r. 1.
417 ...	.....	" r. 2.
418 ...	.....	" r. 3.
419 ...	.....	" r. 4.
420 ...	.....	" r. 5.
421 ...	.....	" r. 6.
422 ...	.....	O. V, r. 27.
423 ...	.....	O. XXVII, r. 7.
424 ...	Clause 80	.....
425 ...	" 81	.....
426 } 427 }	.....	O. XXVII, r. 8.
428 ...	Clause 81	.....
429 ...	" 82	.....
430 ...	" 83	.....
431 ...	" 84	.....
432 ...	" 85	.....
433 ...	" 86	.....
434 ...	" 87	.....
435 ...	.....	O. XXIX, r. 1.
436 ...	.....	" r. 2, 3.
437 ...	.....	O. XXXI, r. 1.
438 ...	.....	" r. 2.
439 ...	.....	" r. 3.
440 ...	.....	O. XXXII, rr. 1, 4 (1).
441 ...	.....	" r. 5. (1).
442 ...	.....	" r. 2.

Section of Act XIV of 1882.	Clause of Bill.	Order and Rule.
443		O. XXXII, п. 3 (1), 4 (2).
444		" r. 5 (2).
445		" r. 4 (1).
446		" r. 9.
447		" r. 8.
448		" r. 10 (1).
449		" r. 10 (2).
450		" r. 12 (1).
451		" r. 12 (2), (3).
452		" r. 12 (4).
453		" r. 12 (5).
454		" r. 13.
455		" r. 14.
456		" п. 3 (2), (3), 4 (4).
457		" r. 4 (1).
458		" r. 11 (1).
459		" r. 11 (2).
460	Omitted.	
461		O. XXXII, r. 6.
462		" r. 7.
463		" r. 15.
464		" r. 16.
465		O. XXVIII, r. 1.
466		" r. 2.
467		" r. 3.
468		O. V, п. 28, 29.
470	Clause 88	
471		O. XXXV, r. 1.
472		" r. 2.
473		" r. 4.
474		" r. 5.
475		" r. 6.
476		" r. 3.
477	}	O. XXXVIII, r. 1.
478		
479		" r. 2.

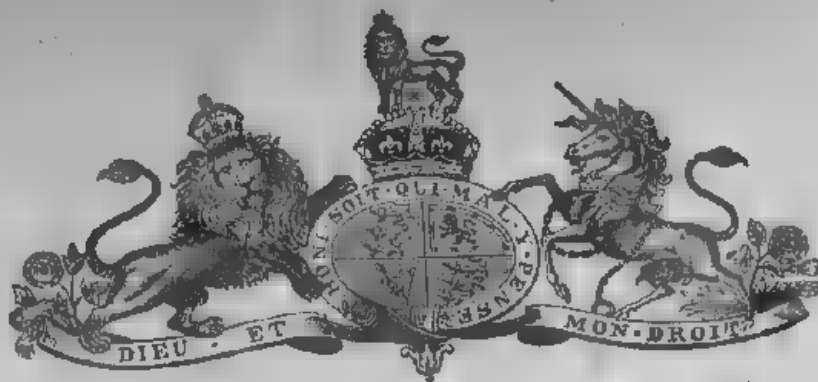
Section of Act XIV of 1882.	Clause of Bill.	Order and Rule.
480	O. XXXVIII, r. 3.
481	" r. 4.
482	" r. 5.
483	}	" r. 6.
484		" r. 7.
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486		" r. 9.
487		" r. 10.
488	" r. 11.
489	" r. 12.
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491	Clause 95	O. XXXIX, r. 1.
492	" r. 2.
493	" r. 3.
494	" r. 5.
495	" r. 4.
496
497	Clause 95	O. XXXIX, r. 6.
498 ... ..	...	" r. 7.
499 ... ..	...	" r. 8.
500	" r. 9.
501	" r. 10.
502	O. XL, rr. 1 to 3.
503	" r. 5.
504
505	Omitted.	...
506	} The Second Schedule.	...
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Section of Act XIV of 1882.	Clause of Bill.	Order and Rule.
515 ...	The Second Schedule.	...
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526 ...	Clause 90	O. XXXVI, r. 1.
527 ...		" r. 2.
528 ...		" r. 3.
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532 ...		" r. 3.
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535 ...		" r. 6.
536 ...	Clauses 92 and 93	" r. 7.
537 ...		" r. 1.
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541 ...		O. XLI, r. 1.
542 ...		" r. 2.
543 ...		" r. 3.
544 ...		" r. 4.
545 ...		" r. 5.
546 ...	Clause 96	" r. 6.
547 ...		" r. 7.
548 ...		" r. 9.
549 ...		" r. 12.
550 ...		" r. 13.

Section of Act XIV of 1882.	Clause of Bill.	Order and Rule.
551 ... ..	...	O. XLI, r. 11.
552 ... ..	...	" r. 12.
553 .. ...	...	" r. 14.
554 .. ...	...	" r. 15.
555 ... ..	...	" r. 16.
556 ... ..	...	" r. 17.
557 ... ..	...	" r. 18.
558 ... ..	...	" r. 19.
559 ... ..	...	" r. 20.
560 ... ..	...	" r. 21.
561 ... ..	...	" r. 22.
562 ... ..	...	" r. 23.
564	Omitted.	
565	O. XLI, r. 24.
566	" r. 25.
567	" r. 26.
568	" r. 27.
569	" r. 28.
570	" r. 29.
571	" r. 30.
572	} Cf. clause 135	...
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574	O. XLI, r. 31.
575	Clause 98	...
576	O. XLI, r. 34.
577	" r. 32.
578	Clause 99	...
579	O. XLI, r. 35.
580	" r. 36.
581	" r. 37.
582	Clause 107 (r)	O. XXII, r. 11.
582A	Cf. clause 146	...
583	" 144 (1)	...
584	" 100	...
585	" 101	...

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588 ...	" 104	O. XLIII, r. 1.
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590 ...	" 106	O. XLIII, r. 2.
591 ...	" 107	...
592	O. XLIV, r. 1.
593	" r. 2.
594	O. XLV, r. 1.
595 ...	Clause 109	...
596 ...	" 110	...
597 ...	" 111	...
598	O. XLIV, r. 2.
600	" r. 3.
601	" r. 6.
602	" r. 7.
603	" r. 8.
604	" r. 9.
605	" r. 10.
606	" r. 11.
607	" r. 12.
608	" r. 13.
609	" r. 14.
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611	" r. 16.
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615 ...		
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617 ...	" 113	O. XLVI, r. 1.
618	" r. 2.
619	" r. 3.
620	" r. 4.
621	" r. 5.
622 ...	Clause 115	...

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623 ...	Clause 114	O. XLVII, r. 1.
624 ...	"	" r. 2.
625 ...	"	" r. 3.
626 ...	"	" r. 4.
627 ...	"	" r. 5.
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630 ...	"	" r. 8.
631 ...	Clause 116	"
632 ...	" 117	"
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637 ...	Clause 128 (2) (1)	"
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639 ...	" 120 (2)	"
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643 ...	Omitted.	"
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645 ...	Clause 137	"
645A ...	" 140	"
646 ...	Omitted.	"
646A ...	"	O. XLVI, r. 6.
646B ...	"	" r. 7.
647 ...	Clause 141	"
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649 ...	" 36, 37	"
650 ...	Omitted.	"
650A ...	Clause 29	"
652 ...	Clauses 122, 129, 130 and 131	"
653 ...	Clause 59	"



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 14, 1908.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced in the Council of the Governor General of India for making Laws and Regulations, Reports of Select Committees presented to the Council, and Bills published under Rule 28.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 13th March, 1908:—

NO. 2 OF 1908.

A Bill further to amend the Whipping Act, 1864, and the Code of Criminal Procedure, 1898.

VI of 1864. WHEREAS it is expedient further to amend
V of 1898. the Whipping Act, 1864, and the Code of Criminal Procedure, 1898; It is hereby enacted as follows:—

1. This Act may be called the Whipping (Amendment) Act, 1908.
Short title.

VI of 1864. 2. In section 2 of the Whipping Act, 1864,
Repeal of portion of section 2, Act VI, 1864. clauses (3), (5), (6), (7) and (8) are hereby repealed.

3. For sections 3, 4 and 4A of the said Act the following shall be substituted, namely:—
Substitution of new section for sections 3, 4 and 4A of same Act.

Offences punishable with whipping in lieu of or in addition to other punishment.

"3. Whoever—

(a) abets, commits or attempts to commit, rape as defined in section 375 of the Indian Penal Code, XLV of 1860.

(b) voluntarily causes hurt in committing or in attempting to commit robbery as defined in section 390 of the said Code,

(c) commits dacoity as defined in section 391 of the said Code,

may be punished with whipping in lieu of or in addition to any other punishment to which he may for such offence, abetment or attempt be liable under the said Code."

Amendment of section 5 of same Act. 4. In section 5 of the said Act the words "falling under clause (b)" are hereby repealed.

5. In section 6 of the said Act, for the words "any of the offences specified in section 4 of this Act" the words "any offence punishable under the Indian Penal Code with imprisonment for three years or upwards" shall be substituted.

6. In section 32 of the Code of Criminal Procedure, 1898, the words "Whipping (if specially empowered)" and sub-section (3) are hereby repealed. V of 1898.

7. To section 392, sub-section (s), of the said Code the words "and, in the case of a person under sixteen years of age, it shall not exceed fifteen stripes" shall be added.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to amend the law relating to the punishment of whipping so as to restrict the classes of offences for which that punishment may be inflicted and to limit the number of officers who may be empowered to award it.

Clause 2.—This clause repeals clauses (3), (5), (6), (7) and (8) of section 2 of the Whipping Act, 1864. The result of these repeals will be to abolish whipping for theft by a clerk or servant and all kinds of extortion and receiving stolen property.

Clause 3.—This clause repeals sections 3, 4 and 4A of the same Act and enacts a new section 3. The effect of the repeal of the existing section 3 is to exclude whipping as an additional punishment on second conviction, while the new section 3, which takes the place of the existing sections 4 and 4A, limits the offences punishable with whipping in lieu of or in addition to other punishments to—

- (a) rape, abetment of rape and attempt to commit rape,
- (b) voluntarily causing hurt in committing or in attempting to commit robbery, and
- (c) dacoity.

Clause 4.—By this clause the words "falling under clause (b)", contained in the proviso to section 5 of the same Act, are repealed. The repeal of these words will enable the Governor General in Council to exempt juvenile offenders from the punishment of whipping in respect of any offence which is punishable under the Indian Penal Code otherwise than with death, and not merely, as at present, in respect of offences punishable under any other law with imprisonment.

Clause 5.—The amendment made by this clause in section 6 of the same Act, which deals with the infliction of the punishment of whipping in Frontier Districts, is merely consequential on the amendment of the law proposed in clause 3 as above described.

Clause 6.—This clause repeals the provisions contained in section 32 of the Code of Criminal Procedure, 1898, enabling the Local Government to empower second class Magistrates to pass sentences of whipping.

Clause 7.—This clause amends sub-section (2) of section 392 of the same Code by adding words limiting the punishment of whipping in the case of persons under sixteen years of age to fifteen stripes.

H. ADAMSON.

The 11th March, 1908.

J. M. MACPHERSON,
Secretary to the Government of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 21, 1908.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced in the Council of the Governor General of India for making Laws and Regulations, Reports of Select Committees presented to the Council, and Bills published under Rule 28.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to consolidate and amend the law for the Limitation of Suits, and for other purposes, was presented to the Council of the Governor General of India for the purpose of making Laws and regulations on the 20th March, 1908 :—

LEGISLATIVE DEPARTMENT.

WE, the undersigned, Members of the Select Committee to which the Bill to consolidate and amend the Law for the Limitation of Suits, and for other purposes was referred, have considered the Bill and the papers noted in the appendix, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. This Bill does not purport to be a general amendment of the law of limitation and we have not treated it in that sense. The objects of it are to consolidate the law, which at present is scattered throughout a series of enactments, to clear up some points of doubt on which conflicts exist between the various High Courts, to make some amendments which are ancillary to the Code of Civil Procedure Bill lately passed by Council, and to remove the hardship caused by a recent decision of the Privy Council in regard to the period of limitation for certain suits on mortgages. The criticisms on the Bill raise a number of other points and make various suggestions for wider reforms, but we have rejected these criticisms and confined ourselves to the objects stated.

3. In the *notes on clauses* in the following paragraph we have dealt with the amendment of the law contained in the Bill as circulated for opinion, but there are two points on which after the fullest consideration we suggest further amendment and to them we desire to invite particular attention. The first of them relates to clause 6 of the Bill, which corresponds with section 7 of the existing Act. Under that clause a minor is entitled to claim the benefit of his minority in respect of any application and he can make an application on attaining his majority in any matter whatever. In our opinion this provision leads to great hardship. It is possible for a minor to make an application to set aside a sale in execution of a decree or an order for abatement twenty years after the occurrence and this although he has been represented by a guardian *ad litem* at the time of the sale or abatement. We think that this clause should be limited to applications for the execution of decrees, and that in regard to other applications the minor should be bound by the acts of his representatives. The same observation applies to clause 7. We desire to point out in this connection that in regard to those applications which are now governed by periods of limitation enacted in the Code of Civil Procedure, minors cannot at the present time claim the benefit of this section. These provisions have now been removed

from the Code of Civil Procedure to this Bill. It is clear that in regard to those applications the minor ought not to have the benefit of this clause and we can see no distinction between applications in this respect. The second point arises in regard to clause 14. There is a conflict of opinion as to whether misjoinder of parties or of causes of action is a "cause of a like nature" with defect of jurisdiction within the meaning of this clause. There is much to be said for the view that there is a distinction between defects of jurisdiction and misjoinder of parties or of causes of action; but on the whole we think that the clause should be extended to cover these latter cases, and we have inserted an explanation for that purpose.

4. We have somewhat re-arranged the clauses in order to preserve the existing numbering.

CLAUSES.

Clause 2.—We have omitted sub-clause 6; the definition of moveable property contained in it has been objected to, and we think on the whole that it should be omitted.

Clause 3.—The illustrations have been omitted. We think that they are not necessary, and are liable to misconstruction.

Clause 5.—It has been suggested that the scope of clause 5 should be enlarged, and a doubt has been expressed by high authority as to whether the expression "Code of Civil Procedure" would include rules which may be made under it. We have accordingly altered this clause so as to make its provisions extend to applications for leave to appeal and to all applications to which it may be made applicable by "any enactment or rule for the time being in force."

Clause 6 of the Bill as introduced is, in our opinion, merely explanatory of clause 5; we have accordingly omitted the former and embodied its purport in an explanation to the latter clause.

Clauses 6, 7 and 8.—We have already referred to the principal alteration we have made in clauses 6 and 7.

Adopting a suggestion of the Chief Justice of Bombay we have slightly altered the language of clause 7 so as to bring it more into conformity with that of clause 6.

Clause 12 (2).—We have struck out the words "as a pauper" from this sub-clause so as to make its provisions applicable to all applications for leave to appeal.

Clause 14.—We have re-drafted sub-clause (2) so as to bring it into line with sub-clause (1), and have made Explanation II more comprehensive.

We have added Explanation III to remove the conflict to which we have referred to above.

Clause 15.—We have altered clause 18 of the Bill as introduced so as to allow the period of notice to be excluded in the case of all suits of which notice is required to be given by any enactment for the time being in force, and we have brought it up as sub-clause (2) to clause 15.

Clause 16.—We have enlarged the scope of this clause. The right to apply to set aside an execution sale is not limited to the judgment-debtor.

Clause 19.—We have struck out the words in *italics*; we think that the object with which they were inserted would be better carried out by the explanation which we have added.

We have struck out the words "according to the nature of the original liability" in sub-clause (1) as unnecessary and added the words "subject to the provisions of the Indian Evidence Act, 1872" in sub-clause (2) to remove a conflict.

Clause 20.—We have omitted the words "according to the nature of the original liability."

Clause 24.—We have struck out illustration (b).

Clause 31.—We have re-drafted this clause so as to make its provisions of wider application. We think it will now be found to provide for all the classes of cases which have been brought to our notice.

SCHEDULE I.

We approve of the proposal to omit Articles 34 and 35 of the Second Schedule of the Indian Limitation Act, 1877.

Article 34 provides for suits for the recovery of a wife; we fully agree in the opinion expressed by the Special Committee on the Civil Procedure Code that there can be under the law no such decree as a decree for the recovery of a wife, and there would be no point in providing a period of limitation for a suit for that purpose.

Article 35 provides for suits for the restitution of conjugal rights.

After giving the matter our best consideration we have arrived at the conclusion that this article should also be omitted. The High Court of Allahabad and the Chief Court of the Punjab hold that these suits are not subject to any rule of limitation on the ground, amongst others, that the withholding of conjugal rights is to be regarded as a continuing wrong within the meaning of section 23 of the Act, while the Bombay High Court, whose view has been adopted by the High Courts of Calcutta and Madras, has applied the bar of limitation on the ground that the specific provisions of this article must be taken to override the general provisions of section 23. The omission of the article would remove this conflict.

Suits for the restitution of conjugal rights brought under the Indian Divorce Act are not governed by any rule of limitation, and we can see no reason why similar suits brought under any other law should be differently treated in this respect.

Article 99.—We have omitted the explanation.

Article 109.—We have struck out from the third column all the words except "when the profits are received". Those words refer to suits for restitution consequential on the reversal of a decree and would no longer be needed as the Code of Civil Procedure, 1908, provides that no suit would lie to claim such restitution.

Article 116.—We have restored the Article of the present Act.

Article 118.—We have not attempted to remove the conflict which exists as to the construction of this article, and we have thought it right not to make any alteration in it. We have accordingly struck out the words proposed to be added in the third column.

Article 134.—The word "purchase" in this article has been held to include mortgages and leases. We have used the general word "transfer" in its place.

Article 138.—We think that the starting point for the running of time should be the date when the sale becomes absolute; the purchaser would not be in a position to sue for possession before that date.

Article 153.—We understand that an application for a certificate that a case is a fit one for appeal to His Majesty in Council is in ordinary legal language spoken of as an application for leave to appeal. We have used the expression leave to appeal in this article and elsewhere to include this meaning.

Article 163.—This article has been re-drafted so as to include certain provisions relating to limitation which have been removed from the Code of Civil Procedure, 1908.

Articles 164, 169.—In these two articles we have altered the time from which the period would begin to run.

Under the Code of Civil Procedure a defendant or a respondent against whom a decree has been passed *ex parte* may have it set aside either on the ground that the summons in the suit or the notice of appeal had not been duly served on him or on the ground that he had sufficient cause for not appearing on the day fixed for trial. We think that in cases where a person claims to have a decree passed against him set aside notwithstanding that the summons or notice was duly served on him, time should run against him from the date of the decree and that where there has been no due service of summons or notice, time ought not to run against him until he has knowledge of the decree.

We have added a new article No. 180 incorporating certain provisions as to limitation which have been removed from the Code of Civil Procedure Bill.

5. The publication ordered by the Council has been made as follows:—

In English.

<i>Gazette.</i>	<i>Date.</i>
Gazette of India	4th January, 1908.
Port Saint George Gazette	Not reported.
Bombay Government Gazette	
Calcutta Gazette	8th January, 1908.
United Provinces of Agra and Oudh Government Gazette	11th January, 1908.
Punjab Government Gazette	17th January, 1908.
Burma Gazette	18th January, 1908.
Eastern Bengal and Assam Gazette	22nd January, 1908.
Central Provinces Gazette	11th January, 1908.
Coorg District Gazette	Not reported.
Sind Official Gazette	

In the Vernaculars.

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
Bengal	Bengali	3rd March, 1908.
	Hindi	4th February, 1908.
	Uriya	17th February, 1908.
United Provinces of Agra and Oudh	Urdu	28th February, 1908.
	Urdu	28th February, 1908.
	Marathi	2nd March, 1908.
	Marathi	2nd March, 1908.

6. We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended.

H. ERLE RICHARDS.

H. ADAMSON.

MADHO LAL.

G. M. CHITNAVIS.

RASHBEHARY GHOSE.

S. ISMAY.

The 18th March, 1908.

V A 2

APPENDIX.

- From Chief Commissioner in Baluchistan, No. 5552, dated 12th December, 1907. [Paper No. 1].
- From Chief Commissioner, Central Provinces, No. 2063—V.-4-5, dated 19th December, 1907, and enclosures. [Papers No. 2].
- From Government, Punjab, No. 64 (Home, Legislative), dated 23rd December, 1907, and enclosures. [Papers No. 3].
- From Government, Burma, No. 653-L.—25, dated 17th December, 1907, and enclosures. [Papers No. 4].
- From the Hon'ble Mr. P. S. Sivaswamy Aiyar, Acting Advocate General, Madras, dated 26th December, 1907. [Paper No. 5].
- From Government, Bombay, No. 28, dated 4th January, 1908, and enclosures. [Papers No. 6].
- From Government, United Provinces, No. 1355, dated 27th December, 1907, and enclosures. [Papers No. 7].
- From Government, Eastern Bengal and Assam, No. 6570-J., dated 25th December, 1907, and enclosures. [Papers No. 8].
- From Government, Punjab, No. 2 Home, dated 7th January, 1908, and enclosures. [Papers No. 9].
- From Chief Commissioner, North-West Frontier Province, No. 56-G., dated 9th January, 1907, and enclosure. [Papers No. 10].
- From Government, Madras, No. 2155, dated 30th December, 1907, and enclosures. [Papers No. 11].
- From Chief Commissioner, Ajmer-Merwara, No. 1495-C., dated 18th December, 1907, and enclosures. [Papers No. 12].
- From Government, Eastern Bengal and Assam, No. 783-J., dated 8th February, 1908. [Papers No. 13].
- From Chief Commissioner, Ajmer-Merwara, No. 433-C.—699-X., dated 18th February, 1908, and enclosure. [Papers No. 14].
- From High Court, Calcutta, No. 602, dated 21st February, 1908. [Paper No. 15.]
- From Mr. P. C. Mogha, Vakil, Aligarh, dated 6th February, 1908. [Paper No. 16.]
- From Babu U. N. Mitra, Vakil, High Court, Calcutta, dated 25th February, 1908. [Paper No. 17.]
- From Chief Commissioner, Central Provinces, No. 442—V. 4-5-1907, dated 6th March, 1908, and enclosures. [Papers No. 18.]

No. II.

THE INDIAN LIMITATION
BILL.

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*The Indian Limitation Bill.**(Part I.—Preliminary. Part II.—Limitation of Suits, Appeals and Applications.)*

[The portions printed in italics denote the alteration proposed by the Select Committee.]

No. II.

The bracketed marginal references relate to sections of the Indian Limitation Act, 1877.

A Bill to consolidate and amend the law for the Limitation of Suits, and for other purposes.

WHEREAS it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property; it is hereby enacted as follows:—

PART I.**PRELIMINARY.**

[S. 1.] 1. (1) This Act may be called the Indian Short title, extent Limitation Act, 1908. and commencement.

(2) It extends to the whole of British India; and

(3) This section and section 31 shall come into force at once. The rest of this Act shall come into force on the first day of January, 1909.*

[S. 2.] 2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(1) "applicant" includes any person from or through whom an applicant derives his right to apply;

(2) "bill of exchange" includes a hundi and a cheque;

(3) "bond" includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(4) "defendant" includes any person from or through whom a defendant derives his liability to be sued;

(5) "easement" includes a right, not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in, or attached to, or subsisting upon, the land of another;

(6) "foreign country" means any country other than British India;

(7) "good faith": nothing shall be deemed to be done in good faith which is not done with due care and attention;

* This is the date proposed for the commencement of the Code of Civil Procedure, 1908.

(8) "plaintiff" includes any person from or through whom a plaintiff derives his right to sue;

(9) "promissory note" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight;

(10) "suit" does not include an appeal or an application;

(11) "trustee" does not include a benami-dar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title.

PART II.**LIMITATION OF SUITS, APPEALS AND APPLICATIONS.**

3. Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence. [S. 4.]

Explanation.—A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is made; and, in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

4. Where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens. [S. 3, para. 2.]

5. Any appeal or application for a review of judgment or for leave to appeal or any other application to which this section may be made applicable by any enactment or rule for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. [S. 3, para. 2.]

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[S. 5A.] *Explanation.*—The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

[S. 7.] 6. (1) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule.

(2) Where such person is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

(3) Where the disability continues up to the death of such person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

(4) Where such representative is at the date of the death affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

Illustrations.

(a) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accrual. He may institute his suit at any time within three years from the date of his attaining majority.

(b) A right to sue accrues to Z during his minority. After the accrual, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

(c) A right to sue accrues to X during his minority. X dies before attaining majority, and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

[S. 8.] 7. Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule.

person, time will run against them all: but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Illustrations.

(a) A incurs a debt to a firm of which B, C and D are partners. B is insane, and C is a minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C and D.

(b) A incurs a debt to a firm of which E, F and G are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E or F becomes sane, or G attains majority.

8. Nothing in section 6 or in section 7 applies [S. 7, last para.] to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

Illustrations.

(a) A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accrual. A has, under the ordinary law, only one year remaining within which to sue. But under section 6 and this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

(b) A right to sue for an hereditary office accrues to A who at the time is insane. Six years after the accrual A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under section 6 read with this section.

(c) A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accrual, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. Section 6 read with this section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

9. Where once time has begun to run, no continuous run—subsequent disability or inability to sue stops it: [S. 9]

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representa- [S. 10]

*The Indian Limitation Bill.**Part II.—Limitation of Suits, Appeals and Applications. Part III.—Computation of Period of Limitation.)*

tives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

- [S. 11.] 11. (1) Suits instituted in British India on contracts entered into in a foreign country are subject to the rules of limitation contained in this Act.

(2) No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

- [S. 12.] 12. (1) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

- [S. 13.] 13. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India shall be excluded.

- [S. 14.] 14. (1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the

defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Explanation I.—In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation II.—For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

Explanation III.—For the purposes of this section misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

- [S. 15.] 15. (1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(2) In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded. [New.]

- [S. 16.] 16. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

- [S. 17.] 17. (1) Where a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall

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be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

(3) Nothing in sub-sections (1) and (2) applies to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an hereditary office.

18.] 18. Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded,

Effect of fraud. or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application—

(a) against the person guilty of the fraud or accessory thereto, or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

19.] 19. (1) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

Effect of acknowledgment in writing. (2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but, subject to the provisions of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received.

1872. Explanation 1.—For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal

to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation 11.—For the purposes of this section, "signed" means signed either personally or by an agent duly authorized in this behalf.

Explanation 111.—For the purposes of this section an application for the execution of a decree or order is an application in respect of a right.

20. (1) Where interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf,

[S. 20.]

or where part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf,

a fresh period of limitation shall be computed from the time when the payment was made:

Provided that, in the case of part payment of the principal of a debt, the fact of the payment appears in the handwriting of the person making the same.

(2) Where mortgaged land is in the possession of the mortgagee, the produce of mortgaged receipt of the rent or produce of such land shall be deemed to be a payment for the purpose of sub-section (1).

Explanation.—Debt includes money payable under a decree or order of Court.

21. (1) The expression "agent duly authorized in this behalf", in sections 19 and 20, shall, in the case of a person under disability, include his lawful guardian, committee or manager, or an agent duly authorized by such guardian, committee or manager to sign the acknowledgment or make the payment.

[New.]

(2) Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed or of a payment made by, or by the agent of, any other or others of them.

[S. 21.]

22. (1) Where, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.

[S. 22, para. 1.]

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted

[New.]

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owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

- [S. 23.] 23. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

- [S. 24.] 24. In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Illustration.

A owns the surface of a field. B owns the subsoil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by A against B runs from the time of the subsidence.

- [S. 25.] 25. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Illustrations.

(a) A Hindu makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiration of four months after date computed according to the Gregorian calendar.

(b) A Hindu makes a bond, bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiration of one year after date computed according to the Gregorian calendar.

PART IV.

ACQUISITION OF OWNERSHIP BY POSSESSION.

- [S. 26.] 26. (1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, and as of right, without interruption, and for twenty years, and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption, and for twenty years,

the right to such access and use of light or air, way, watercourse, use of water, or other easement shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

(2) Where the property over which a right is claimed under sub-section (1) belongs to Government, that sub-section shall be read as if for the words "twenty years" the words "sixty years" were substituted.

Explanation.—Nothing is an interruption within the meaning of this section unless, where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Illustrations.

(a) A suit is brought in 1911 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1st January, 1890, to 1st January, 1910. The plaintiff is entitled to judgment.

(b) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion during the twenty years, had asked his leave to enjoy the right. The suit shall be dismissed.

27. Where any land or water upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

[S. 27.]

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years C, a Hindu widow, had a life interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

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26.] 8. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

PART V.

SAVINGS AND REPEALS.

1, 2, 6.] Savings. 29. (1) Nothing in this Act shall—

of 1872. (a) affect the Indian Contract Act, 1872, section 25;

(b) affect or alter any period of limitation specially prescribed for any suit, appeal or application by any special or local law now or hereafter in force in British India.

(2) Nothing contained in sections 2 and 32 or in Parts II and III shall apply—

of 1869. (a) to suits under the Indian Divorce Act, or

of 1831. (b) to suits under the Madras Hereditary Offices Regulation, 1831.

[New.] (3) Sections 26 and 27 and the definition of "easement" in section 2 shall not apply to cases arising in territories to which the Indian Easements Act, 1882, may for the time being extend.

[New.] 30. Notwithstanding anything herein contained, any suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by the Indian Limitation Act, 1877.

the Indian Limitation Act, 1877, may be instituted within the period of two years next after the passing of this Act, or within the period prescribed for such suit by the Indian Limitation Act, 1877, whichever period expires first. XV of 1877.

31. (1) Notwithstanding anything contained in this Act or in the Indian Limitation Act, 1877, in the territories mentioned in the second schedule a suit for foreclosure or a suit for sale by a mortgagee, may be instituted within two years from the date of the passing of this Act, or within sixty years from the date when the money secured by the mortgage became due, whichever period expires first; and no such suit in the said territories instituted within the said period of sixty years and pending at the date of the passing of this Act, either in a Court of first instance or of appeal, shall be dismissed on the ground that a twelve years' rule of limitation is applicable. [New.]

Provision for suits by certain mortgagees in territories mentioned in the second schedule. XV of 1877.

(2) Where in the aforesaid territories the claim of a mortgagee for foreclosure or for sale has been wholly or in part dismissed or withdrawn after the twenty-second day of July 1907 and before the passing of this Act either in a Court of first instance or of appeal on the ground that a twelve years' rule of limitation applied to such claim, the case may be restored on an application in writing to the Court by which the claim was dismissed or in which it was withdrawn, provided the application is made within six months from the date of the passing of this Act: and, on such restoration, the provisions of sub-section (1) shall apply.

32. The enactments mentioned in the third schedule are repealed to the extent specified in the fourth column thereof.

Repeals.

Repeals. The enactments mentioned in the third schedule are repealed to the extent specified in the fourth column thereof.

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(The First Schedule.—First Division: Suits.)

The bracketed marginal references are to articles in the second schedule of the Limitation Act, 1877.

THE FIRST SCHEDULE.

(See section 3.)

FIRST DIVISION: SUITS.

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part I.— Thirty days.</i>	
[Art. 1.] XXIII of 1863. 1.—To contest an award of the Board of Revenue under the Waste Lands (Claims) Act, 1863.	Thirty days	When notice of the award is delivered to the plaintiff.
	<i>Part II.— Ninety days.</i>	
[Art. 2.] 2.—For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in British India.	Ninety days	When the act or omission takes place.
	<i>Part III.— Six months.</i>	
[Art. 3.] I of 1877. 3.—Under the Specific Relief Act, 1877, section 9, to recover possession of immovable property.	Six months	When the dispossession occurs.
	<i>Ditto</i>	
[Art. 4.] IX of 1860. 4.—Under the Employers and Workmen (Disputes) Act, 1860, section 1.	Ditto	When the wages, hire or price of work claimed accrue or accrues due.
	<i>Ditto</i>	
[Art. 5.] 5.—Under the summary procedure referred to in section 128 (2) (f) of the Code of Civil Procedure, 1908.	Ditto	When the debt or liquidated demand becomes payable or when the property becomes recoverable.
	<i>Part IV.— One year.</i>	
[Art. 6.] 6.—Upon a Statute, Act, Regulation or By-law, for a penalty or forfeiture.	One year	When the penalty or forfeiture is incurred.
	<i>Ditto</i>	
[Art. 7.] 7.—For the wages of a household servant, artisan or labourer not provided for by this schedule, article 4.	Ditto	When the wages accrue due.
	<i>Ditto</i>	
[Art. 8.] 8.—For the price of food or drink sold by the keeper of a hotel, tavern or lodging-house.	Ditto	When the food or drink is delivered.
	<i>Ditto</i>	
[Art. 9.] 9.—For the price of lodging	Ditto	When the price becomes payable.

THE FIRST SCHEDULE—contd.

FIRST DIVISION: SUITS—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IV.— One year—contd.</i>	
10.—To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on a special contract.	One year	When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered. [Art. 10.]
	<i>Ditto</i>	
11.—By a person, against whom any of the following orders has been made to establish the right which he claims to the property comprised in the order: (1) Order under the Code of Civil Procedure, 1908, on a claim preferred to, or an objection made to the attachment of property attached in execution of a decree; (2) Order under section 28 of the Presidency Small Cause Courts Act, 1882.	Ditto	The date of the order. [Art. 11.]
	<i>Ditto</i>	
11A.—By a person against whom an order has been made under the Code of Civil Procedure, 1908, upon an application by the holder of a decree for the possession of immovable property or by the purchaser of such property sold in execution of a decree, complaining of resistance or obstruction to the delivery of possession thereof, or upon an application by any person dispossessed of such property in the delivery of possession thereof to the decree-holder or purchaser, to establish the right which he claims to the present possession of the property comprised in the order.	Ditto	The date of the order. [Art. 11A.]

XV of 1884

[Art. 11A.]

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(*The First Schedule.—First Division: Suits.*)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IV.— One year— contd.</i>	
[Art. 12.] 12.—To set aside any of the following sales:— (a) sale in execution of a decree of a Civil Court; (b) sale in pursuance of a decree or order of a Collector or other officer of revenue; (c) sale for arrears of Government revenue, or for any demand recoverable as such arrears; (d) sale of a patni taluq sold for current arrears of rent. <i>Explanation.—In this article "patni" includes any intermediate tenure saleable for current arrears of rent.</i>	One year	When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.
[Art. 13.] 13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.	Ditto	The date of the final decision or order in the case by a Court competent to determine it finally.
[Art. 14.] 14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.	Ditto	The date of the act or order.
[Art. 15.] 15.—Against Government to set aside any attachment, lease or transfer of immovable property by the revenue-authorities for arrears of Government revenue.	Ditto	When the attachment, lease or transfer is made.
[Art. 16.] 16.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue-authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	Ditto	When the payment is made.
[Art. 17.] 17.—Against Government for compensation for land acquired for public purposes.	Ditto	The date of determining the amount of the compensation.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.	
	<i>Part IV.— One year— contd.</i>		
18.—Like suit for compensation when the acquisition is not completed.	One year	The date of the refusal to complete.	[Art. 18.]
19.—For compensation for false imprisonment.	Ditto	When the imprisonment ends.	[Art. 19.]
20.—By executors, administrators or representatives under the Legal Representatives' Suits Act, 1855.	Ditto	The date of the death of the person wronged.	[Art. 20.] XII of 1855.
21.—By executors, administrators or representatives under the Indian Fatal Accidents Act, 1855.	Ditto	The date of the death of the person killed.	[Art. 21.] XIII of 1855.
22.—For compensation for any other injury to the person.	Ditto	When the injury is committed.	[Art. 22.]
23.—For compensation for a malicious prosecution.	Ditto	When the plaintiff is acquitted, or the prosecution is otherwise terminated.	[Art. 23.]
24.—For compensation for libel.	Ditto	When the libel is published.	[Art. 24.]
25.—For compensation for slander.	Ditto	When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.	[Art. 25.]
26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	Ditto	When the loss occurs.	[Art. 26.]
27.—For compensation for inducing a person to break a contract with the plaintiff.	Ditto	The date of the breach.	[Art. 27.]
28.—For compensation for an illegal, irregular or excessive distress.	Ditto	The date of the distress.	[Art. 28.]
29.—For compensation for wrongful seizure of moveable property under legal process.	Ditto	The date of the seizure.	[Art. 29.]
30.—Against a carrier for compensation for losing or injuring goods.	Ditto	When the loss or injury occurs.	[Art. 30.]

*The Indian Limitation Bill**(The First Schedule.—First Division; Suits.)*THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.	Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IV.— One year— concl'd.</i>			<i>Part VI.— Three years— concl'd.</i>	
[Art. 31.] 31.—Against a carrier for compensation for non-delivery of, or delay in delivering, goods.	One year	When the goods ought to be delivered.	139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.		
	<i>Part V.— Two years.</i>				
[Art. 32.] 32.—Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Two years	When the perversion first becomes known to the person injured thereby.	44.—By a ward who has attained majority, to set aside a transfer of property by his guardian.	Three years	When the ward attains majority. [Art. 44.]
[Art. 33.] 33.—Under the Legal Representatives' Suits Act, 1855, against an executor.	Ditto	When the wrong complained of is done.	45.—To contest an award under any of the following Regulations of the Bengal Code:— The Bengal Land-revenue Settlement Regulation, 1822. The Bengal Land-revenue Settlement Regulation, 1825. The Bengal Land-revenue (Settlement and Deputy Collectors) Regulation, 1833.	Ditto	The date of the final award or order in the case. [Art. 45.]
[Art. 33.] 34.—Under the same Act against an administrator.	Ditto	Ditto.			VII of 1822.
[Art. 33.] 35.—Under the same Act against any other representative.	Ditto	Ditto.			IX of 1825.
[Art. 36.] 36.—For compensation for any malfeasance, misfeasance or non-feasance independent of contract and not herein specially provided for.	Ditto	When the malfeasance, misfeasance or non-feasance takes place.	46.—By a party bound by such award to recover any property comprised therein.	Ditto	IX of 1833.
	<i>Part VI.— Three years.</i>				
[Art. 37.] 37.—For compensation for obstructing a way or a watercourse.	Three years	The date of the obstruction.	47.—By any person bound by an order respecting the possession of immovable property made under the Code of Criminal Procedure, 1878, or the Māmlūtdār Courts Act, 1906, or by any one claiming under such person, to recover the property comprised in such order.	Ditto	The date of the final award or order in the case. [Art. 46.]
[Art. 38.] 38.—For compensation for diverting a watercourse.	Ditto	The date of the diversion.			The date of the final order in the case. [Art. 47.]
[Art. 39.] 39.—For compensation for trespass upon immovable property.	Ditto	The date of the trespass.			7 of 1898.
[Art. 40.] 40.—For compensation for infringing copyright or any other exclusive privilege.	Ditto	The date of the infringement.			Bom. II of 1906.
[Art. 41.] 41.—To restrain waste.	Ditto	When the waste begins.	48.—For specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.	Ditto	When the person having the right to the possession of the property first learns in whose possession it is. [Art. 48.]
[Art. 42.] 42.—For compensation for injury caused by an injunction wrongfully obtained.	Ditto	When the injunction ceases.			
[Art. 43.] 43.—Under the Indian Succession Act, 1865, section 320 or section 321, or under the Probate and Administration Act, 1881, section	Ditto	The date of the payment or distribution.	49.—For other specific moveable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	Ditto	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful. [Art. 49.]

*The Indian Limitation Bill.**The First Schedule.—First Division: Suits.)*

THE FIRST SCHEDULE—contd.

FIRST DIVISION: SUITS—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years— contd.</i>	
[Art. 50.] 50.—For the hire of animals, vehicles, boats or household furniture.	Three years.	When the hire becomes payable.
[Art. 51.] 51.—For the balance of money advanced in payment of goods to be delivered.	Ditto	When the goods ought to be delivered.
[Art. 52.] 52.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Ditto	The date of the delivery of the goods.
[Art. 53.] 53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Ditto	When the period of credit expires.
[Art. 54.] 54.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Ditto	When the period of the proposed bill elapses.
[Art. 55.] 55.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Ditto	The date of the sale.
[Art. 56.] 56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Ditto	When the work is done.
[Art. 57.] 57.—For money payable for money lent.	Ditto	When the loan is made.
[Art. 58.] 58.—Like suit when the lender has given a cheque for the money.	Ditto	When the cheque is paid.
[Art. 59.] 59.—For money lent under an agreement that it shall be payable on demand.	Ditto	When the loan is made.
[Art. 60.] 60.—For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable.	Ditto	When the demand is made.
[Art. 61.] 61.—For money payable to the plaintiff for money paid for the defendant.	Ditto	When the money is paid.

THE FIRST SCHEDULE—contd.

FIRST DIVISION: SUITS—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.	
	<i>Part VI.— Three years— contd.</i>		
62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Three years	When the money is received.	[Art. 62.]
63.—For money payable for interest upon money due from the defendant to the plaintiff.	Ditto	When the interest becomes due.	[Art. 63.]
64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Ditto	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.	[Art. 64.]
65.—For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Ditto	When the time specified arrives or the contingency happens.	[Art. 65.]
66.—On a single bond, where a day is specified for payment.	Ditto	The day so specified.	[Art. 66.]
67.—On a single bond, where no such day is specified.	Ditto	The date of executing the bond.	[Art. 67.]
68.—On a bond subject to a condition.	Ditto	When the condition is broken.	[Art. 68.]
69.—On a bill of exchange or promissory note payable at a fixed time after date.	Ditto	When the bill or note falls due.	[Art. 69.]
70.—On a bill of exchange payable at sight, or after sight, but not at a fixed time.	Ditto	When the bill is presented.	[Art. 70.]
71.—On a bill of exchange accepted payable at a particular place.	Ditto	When the bill is presented at that place.	[Art. 71.]
72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Ditto	When the fixed time expires.	[Art. 72.]

The Indian Limitation Bill.
(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—contd.

FIRST DIVISION : SUITS—contd.

THE FIRST SCHEDULE—contd.

FIRST DIVISION : SUITS—contd.

Description of suit.	Period of limitation.	Time from which period begins to run.	Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years— contd.</i>			<i>Part VI.— Three years— contd.</i>	
[Art. 73.] 73.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Three years	The date of the bill or note.	82.—By a surety against a co-surety.	Three years	When the surety pays anything in excess of his own share. [Art. 82.]
[Art. 74.] 74.—On a promissory note or bond payable by instalments.	Ditto	The expiration of the first term of payment as to the part then payable; and, for the other parts, the expiration of the respective terms of payment.	83.—Upon any other contract to indemnify.	Ditto	When the plaintiff is actually damaged. [Art. 83.]
[Art. 75.] 75.—On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one or more instalments, the whole shall be due.	Ditto	When the default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.	84.—By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Ditto	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance. [Art. 84.]
[Art. 76.] 76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Ditto	The date of the delivery to the payee.	85.—For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Ditto	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account. [Art. 85.]
[Art. 77.] 77.—On a dishonoured foreign bill, where protest has been made and notice given.	Ditto	When the notice is given.	86.—On a policy of insurance, when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurers.	Ditto	When proof of the death or loss is given or received to or by the insurers, whether by or from the plaintiff, or any other person. [Art. 86.]
[Art. 78.] 78.—By the payee against the drawer of a bill of exchange, which has been dishonoured by non-acceptance.	Ditto	The date of the refusal to accept.	87.—By the assured to recover premium paid under a policy voidable at the election of the insurers.	Ditto	When the insurers elect to avoid the policy. [Art. 87.]
[Art. 79.] 79.—By the acceptor of an accommodation-bill against the drawer.	Ditto	When the acceptor pays the amount of the bill.	88.—Against a factor for an account.	Ditto	When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates. [Art. 88.]
[Art. 80.] 80.—Suit on a bill of exchange, promissory note or bond not herein expressly provided for.	Ditto	When the bill, note or bond becomes payable.	89.—By a principal against his agent for moveable property received by the latter and not accounted for.	Ditto	Ditto. [Art. 89.]
[Art. 81.] 81.—By a surety against the principal debtor.	Ditto	When the surety pays the creditor.	90.—Other suits by principals against agents for neglect or misconduct.	Ditto	When the neglect or misconduct becomes known to the plaintiff. [Art. 90.]

The Indian Limitation Bill.
(The First Schedule.—First Division: Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years— contd.</i>	
[Art. 91.] 91.—To cancel or set aside an instrument not otherwise provided for.	Three years	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.
[Art. 92.] 92.—To declare the forgery of an instrument issued or registered.	Ditto	When the issue or registration becomes known to the plaintiff.
[Art. 93.] 93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Ditto	The date of the attempt.
[Art. 94.] 94.—For property which the plaintiff has conveyed while insane.	Ditto	When the plaintiff is restored to sanity, and has knowledge of the conveyance.
[Art. 95.] 95.—To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	Ditto	When the fraud becomes known to the party wronged.
[Art. 96.] 96.—For relief on the ground of mistake.	Ditto	When the mistake becomes known to the plaintiff.
[Art. 97.] 97.—For money paid upon an existing consideration which afterwards fails.	Ditto	The date of the failure.
[Art. 98.] 98.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Ditto	The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.
[Art. 99.] 99.—For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his co-sharers.	Ditto	The date of the payment in excess of the plaintiff's own share.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.	
	<i>Part VI.— Three years— contd.</i>		
100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Three years	When the right to contribution accrues.	[Art. 100.]
101.—For a seaman's wages	Ditto	The end of the voyage during which the wages are earned.	[Art. 101.]
102.—For wages not otherwise expressly provided for by this schedule.	Ditto	When the wages accrue due.	[Art. 102.]
103.—By a Muhammadan for exigible dower (<i>mu'ajjal</i>).	Ditto.	When the dower is demanded and refused, or (where, during the continuance of the marriage, no such demand has been made) when the marriage is dissolved by death or divorce.	[Art. 103.]
104.—By a Muhammadan for deferred dower (<i>mu'ajjal</i>).	Ditto	When the marriage is dissolved by death or divorce.	[Art. 104.]
105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Ditto	When the mortgagor re-enters on the mortgaged property.	[Art. 105.]
106.—For an account and a share of the profits of a dissolved partnership.	Ditto	The date of the dissolution.	[Art. 106.]
107.—By the manager of a joint estate of an undivided family for contribution, in respect of a payment made by him on account of the estate.	Ditto	The date of the payment.	[Art. 107.]
108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	Ditto	When the trees are cut down.	[Art. 108.]

The Indian Limitation Bill.
(The First Schedule.—First Division: Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years —<i>contd.</i></i>	
[Art. 109.] 109.—For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant.	Three years	When the profits are received.
[Art. 110.] 110.—For arrears of rent.	Ditto	When the arrears become due.
[Art. 111.] 111.—By a vendor of immoveable property for personal payment of unpaid purchase-money.	Ditto	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
[Art. 112.] 112.—For a call by a company registered under any Statute or Act.	Ditto	When the call is payable.
[Art. 113.] 113.—For specific performance of a contract.	Ditto	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
[Art. 114.] 114.—For the rescission of a contract.	Ditto	When the facts entitling the plaintiff to have the contract rescinded first become known to him.
[Art. 115.] 115.—For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.	Ditto	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VII.— Six years.</i>	
116.—For compensation for the breach of a contract in writing registered.	Six years	When the period [Art. 116] of limitation would begin to run against a suit brought on a similar contract not registered.
117.—Upon a foreign judgment as defined in the Code of Civil Procedure, 1908.	Ditto	The date of the [Art. 117] judgment.
118.—To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place.	Ditto	When the alleged [Art. 118] adoption becomes known to the plaintiff.
119.—To obtain a declaration that an adoption is valid.	Ditto	When the rights [Art. 119] of the adopted son, as such, are interfered with.
120.—Suit for which no period of limitation is provided elsewhere in this schedule.	Ditto	When the right [Art. 120] to sue accrues.
	<i>Part VIII.— Twelve years.</i>	
121.—To avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, or in a patni taluq or other saleable tenure sold for arrears of rent.	Twelve years	When the sale [Art. 121] becomes final and conclusive.
122.—Upon a judgment obtained in British India or a recognisance.	Ditto	The date of the [Art. 122] judgment or recognisance.
123.—For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate.	Ditto	When the legacy [Art. 123] or share becomes payable or deliverable.

The Indian Limitation Bill.
(The First Schedule.—First Division: Suits.)

THE FIRST SCHEDULE—*contd.*
FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VIII.— Twelve years— contd.</i>	
Art. 124.] 124.—For possession of an hereditary office.	Twelve years.	When the defendant takes possession of the office adversely to the plaintiff. <i>Explanation.</i> —An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.
Art. 125.] 125.—Suit during the life of a Hindu or Muhammadan female by a Hindu or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage.	Ditto	The date of the alienation.
Art. 126.] 126.—By a Hindu governed by the law ■ the Mitakshara to set aside his father's alienation of ancestral property.	Ditto	When the alienee takes possession of the property.
Art. 127.] 127.—By a person excluded from joint family property, to enforce a right to share therein.	Ditto	When the exclusion becomes known to the plaintiff.
Art. 128.] 128.—By a Hindu for arrears of maintenance.	Ditto	When the arrears are payable.
Art. 129.] 129.—By a Hindu for a declaration of his right to maintenance.	Ditto	When the right is denied.
Art. 130.] 130.—For the resumption or assessment of rent-free land.	Ditto	When the right to resume or assess the land first accrues.
Art. 131.] 131.—To establish a periodically recurring right.	Ditto	When the plaintiff is first refused the enjoyment of the right.

THE FIRST SCHEDULE—*contd.*
FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VIII.— Twelve years— contd.</i>	
132.—To enforce payment of money charged upon immovable property.	Twelve years.	When the money [Art. 132.] sued for becomes due.
<i>Explanation.</i> —The allowance and fees respectively called <i>malikana</i> and <i>haggs</i> shall, for the purpose of this article, be deemed to be money charged upon immovable property.		
133.—To recover moveable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depositary or pawnee for a valuable consideration.	Ditto	The date of the [Art. 133.] purchase.
134.—To recover possession of immovable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for a valuable consideration.	Ditto	The date of the [Art. 134.] transfer.
135.—Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immovable property mortgaged.	Ditto	When the mortgagor's right to possession determines. [Art. 135.]
136.—By a purchaser at a private sale for possession of immovable property sold when the vendor was out of possession at the date of the sale.	Ditto	When the vendor is first entitled to possession. [Art. 136.]
137.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	Ditto	When the judgment-debtor is first entitled to possession. [Art. 137.]

*The Indian Limitation Bill.**(The First Schedule.—First Division: Suits.)*THE FIRST SCHEDULE—*contd.*
FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VIII.— Twelve years— concl'd.</i>	
[Art. 138.] 138.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was in possession at the date of the sale.	Twelve years	The date when the sale becomes absolute.
[Art. 139.] 139.—By a landlord to recover possession from a tenant.	Ditto	When the tenancy is determined.
[Art. 140.] 140.—By a remainderman, a reversioner (other than a landlord) or a devisee, for possession of immoveable property.	Ditto	When his estate falls into possession.
[Art. 141.] 141.—Like suit by a Hindu or Muhammadan entitled to the possession of immoveable property on the death of a Hindu or Muhammadan female.	Ditto	When the female dies.
[Art. 142.] 142.—For possession of immoveable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Ditto	The date of the dispossession or discontinuance.
[Art. 143.] 143.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Ditto	When the forfeiture is incurred or the condition is broken.
[Art. 144.] 144.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for.	Ditto	When the possession of the defendant becomes adverse to the plaintiff.
	<i>Part IX.— Thirty years.</i>	
[Art. 145.] 145.—Against a depositary or pawnee in recover moveable property deposited or pawned.	Thirty years	The date of the deposit or pawn.

THE FIRST SCHEDULE—*contd.*
FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IX.— Thirty years— concl'd.</i>	
146.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.	Thirty years	When any part of the principal or interest was last paid on account of the mortgage-debt. [Art. 146]
146A.—By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.	Ditto	The date of the dispossession or discontinuance. [Art. 146A]
147.—By a mortgagee for foreclosure or sale.	<i>Part X.— Sixty years. Sixty years.</i>	When the money secured by the mortgage becomes due. [Art. 147]
148.—Against a mortgagee to redeem or to recover possession of immoveable property mortgaged.	Ditto	When the right to redeem or to recover possession accrues: Provided that all claims to redeem arising under instruments of mortgage of immoveable property situate in Lower Burma which had been executed before the first day of May, 1863, shall be governed by the rules of limitation in force in that province immediately before the same day. [Art. 148]
149.—Any suit by or on behalf of the Secretary of State for India in Council.	Ditto	When the period of limitation would begin to run under this Act against a like suit by a private person. [Art. 149]

*The Indian Limitation Bill.**(The First Schedule.—Second Division: Appeals.)*THE FIRST SCHEDULE—*contd.*
SECOND DIVISION: APPEALS.

Description of appeal.	Period of limitation.	Time from which period begins to run.
[Art. 150.] v of 1898. 150.—Under the Code of Criminal Procedure, 1898, from a sentence of death passed by a Court of Session.	Seven days	The date of the sentence.
[Art. 151.] 151.—From a decree or order of any of the High Courts of Judicature at Fort William, Madras and Bombay or the Chief Court of the Punjab or the Chief Court of Lower Burma in the exercise of its original jurisdiction.	Twenty days	The date of the decree or order.
[Art. 152.] 152.—Under the Code of Civil Procedure, 1908, to the Court of a District Judge.	Thirty days	The date of the decree or order appealed from.
[Art. 153.] 153.—Under the same Code, to a High Court from an order of a Subordinate Court refusing leave to appeal to His Majesty in Council.	Ditto	The date of the order.
[Art. 154.] v of 1898. 154.—Under the Code of Criminal Procedure, 1898, to any Court other than a High Court.	Ditto	The date of the sentence or order appealed from.
[Art. 155.] 155.—Under the same Code, to a High Court, except in the cases provided for by article 150 and article 157.	Sixty days	Ditto.
[Art. 156.] 156.—Under the Code of Civil Procedure, 1908, to a High Court, except in the cases provided for by article 151 and article 153.	Ninety days	The date of the decree or order appealed from.
[Art. 157.] 157.—Under the Code of Criminal Procedure, 1898, from an order of acquittal.	Six months.	The date of the order appealed from.

THE FIRST SCHEDULE—*contd.*
THIRD DIVISION: APPLICATIONS.

Description of application.	Period of limitation.	Time from which period begins to run.
158.—Under the Code of Civil Procedure, 1908, to set aside an award.	Ten days	When the award is submitted to the Court. [Art. 158.]
159.—For leave to appear and defend a suit under the summary procedure referred to in section 128 (2) (f) of the same Code.	Ditto	When the summons is served. [Art. 159.]
160.—For an order under the same Code, to restore to the file an application for review rejected in consequence of the failure of the applicant to appear when the application was called on for hearing.	Fifteen days	When the application for review is rejected. [Art. 160.]
161.—For a review of judgment by a Provincial Court of Small Causes or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction.	Ditto	The date of the decree or order. [Art. 160A.]
162.—For a review of judgment by any of the High Courts of Judicature at Fort William, Madras and Bombay or the Chief Court of the Punjab or the Chief Court of Lower Burma in the exercise of its original jurisdiction.	Twenty days	Ditto. [Art. 162.]
163.—By a plaintiff, for an order to set aside a dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs.	Thirty days	The date of the dismissal. [Art. 163.]
164.—By a defendant, for an order to set aside a decree passed ex parte.	Ditto	The date of the decree or where the summons was not duly served, when the applicant has knowledge of the decree. [Art. 164.]
165.—Under the Code of Civil Procedure, 1908, by a person dispossessed of immovable property, and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	Ditto	The date of the dispossession. [Art. 165.]
166.—Under the same Code to set aside a sale in execution of a decree.	Ditto	The date of the sale. [Art. 166.]

The Indian Limitation Bill.
(The First Schedule.—Third Division : Applications.)

THE FIRST SCHEDULE—*contd.*
THIRD DIVISION : APPLICATIONS—*contd.*

THE FIRST SCHEDULE—*contd.*
THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.	Description of application.	Period of limitation.	Time from which period begins to run.
[Art. 167.] 167.—Complaining of resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree.	Thirty days	The date of the resistance or obstruction.	177.—Under the same Code to have the legal representative of a deceased defendant or of a deceased respondent made a party.	Six months	The date of the death of the deceased defendant or respondent. [Art. 175B.] [Art. 175C.]
[Art. 168.] 168.—For the readmission of an appeal dismissed for want of prosecution.	Ditto	The date of the dismissal.	178.—Under the same Code for the filing in Court of an award in a suit made in any matter referred to arbitration by order of the Court, or of an award made in any matter referred to arbitration without the intervention of a Court.	Ditto	The date of the award. [Art. 176.]
[Art. 169.] 169.—For the re-hearing of an appeal heard <i>ex parte</i> .	Ditto	The date of the decree in appeal or, where notice of the appeal was not duly served, when the applicant has knowledge of the decree.	179.—By a person desiring to appeal under the same Code to His Majesty in Council for leave to appeal.	Ditto	The date of the decree appealed from. [Art. 177.]
[Art. 170.] 170.—For leave to appeal as a pauper.	Ditto	The date of the decree appealed from.	180.—By a purchaser of immovable property at a sale in execution of a decree for delivery of possession.	Three years	When the sale becomes absolute.
[Cf. Art. 171.] 171.—Under the Code of Civil Procedure, 1908, for an order to set aside an abatement.	Sixty days	The date of the abatement.	181.—Applications for which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure, 1908.	Ditto	When the right to apply accrues. [Art. 178.]
[Cf. Art. 171.] 172.—Under the same Code by the assignee or the receiver of an insolvent plaintiff or appellant for an order to set aside the dismissal of a suit or an appeal.	Ditto	The date of the order of dismissal.	182.—For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908.	Three years or, where a certified copy of the decree or order has been registered, six years.	1. The date of the decree or order, or 2. (where there has been an appeal) the date of the final decree or order of the Appellate Court, or the withdrawal of the appeal, or 3. (where there has been a review of judgment) the date of the decision passed on the review, or 4. (where the decree has been amended) the date of amendment, or
[Art. 173.] 173.—For a review of judgment except in the cases provided for by article 161 and article 162.	Ninety days	The date of the decree or order.			
[Art. 173A.] 174.—For the issue of a notice under the same Code, to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be recorded as certified.	Ditto	When the payment or adjustment is made.			
[Art. 175.] 175.—For payment of the amount of a decree by instalments.	Six months	The date of the decree.			
[Art. 175A.] [Art. 175B.] 176.—Under the same Code to have the legal representative of a deceased plaintiff or of a deceased appellant made a party.	Ditto	The date of the death of the deceased plaintiff or appellant.			

*The Indian Limitation Bill.**(The First Schedule.—Third Division: Applications.)*THE FIRST SCHEDULE—*contd.*THIRD DIVISION: APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
182. For the execution of a decree or order of any Civil Court not provided for by <i>article 183</i> or by <i>section 48</i> of the Code of Civil Procedure, 1908— <i>contd.</i>	Three years; or, where a certified copy of the decree or order has been registered, six years.	5. (where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper Court for execution, or to take some step in aid of execution, of the decree or order, or 6. (where the notice next hereinafter mentioned has been issued) the date of issue of notice to the person against whom execution is applied for to show cause why the decree should not be executed against him, when the issue of such a notice is required by the Code of Civil Procedure, 1908, or 7. (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date. <i>Explanation I.</i> —Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 5 of this article shall take effect in favour only of such of the said persons or their representatives as it may be made by. But where the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all.

THE FIRST SCHEDULE—*concl'd.*THIRD DIVISION: APPLICATIONS—*concl'd.*

Description of application.	Period of limitation.	Time from which period begins to run.
182. For the execution of a decree or order of any Civil Court not provided for by <i>article 183</i> or by <i>section 48</i> of the Code of Civil Procedure, 1908— <i>concl'd.</i>	Three years; or, where a certified copy of the decree or order has been registered, six years.	Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But, where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them, or against him or their representatives, shall take effect against them all. <i>Explanation II.</i> —“Proper Court” means the Court whose duty it is to execute the decree or order.
183.—To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of His Majesty in Council.	Twelve years.	When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right: <i>Provided that</i> when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revival, payment or acknowledgment or the latest of such revivals, payments or acknowledgments, as the case may be.

The Indian Limitation Bill.

(The Second Schedule.—Territories referred to in section 31. The Third Schedule.—Enactments repealed.)

THE SECOND SCHEDULE.

TERRITORIES REFERRED TO IN SECTION 31.

(See section 31.)

The Presidency of Fort St. George.
The Presidency of Bombay.
The Sambalpur District of the Bengal Division of the Presidency of Fort William
The United Provinces of Agra and Oudh.
Burma.
The Central Provinces.
Ajmer-Merwara.

THE THIRD SCHEDULE.

ENACTMENTS REPEALED.

(See section 32.)

Year.	No.	Short title.	Extent of Repeal.
1877	XV	The Indian Limitation Act, 1877.	The whole.
1877	XVII	The Punjab Courts Act, 1877.	So much as has not been repealed.
1879	XII	The Registration and Limitation Acts Amendment Act, 1879.	In the title the words "and the Limitation Act, 1877", and after section 107 from the words "And whereas" to the end of the Act.
1881	V	The Probate and Administration Act, 1881.	Section 156.

Year.	No.	Short title.	Extent of Repeal.
1887	IX	The Provincial Small Causes Courts Act, 1887.	Section 36.
1888	VII	The Civil Procedure Code Amendment Act, 1888.	In the title and in the preamble, the words "and the Indian Limitation Act, 1877", and of section 66 so much as has not been repealed.
1892	VI	The Indian Limitation Act and Civil Procedure Code Amendment Act, 1892.	In the title and in the preamble, the words "the Indian Limitation Act, 1877, and" and section 1.
1899	X	The Carriers Act, 1899.	Section 3.
1900	VI	The Lower Burma Courts Act, 1900.	So much of section 47 and the first schedule as relates to the Indian Limitation Act, 1877.
1900	XI	The Indian Limitation Amendment Act, 1900.	The whole.
1906	IV	The Presidency Small Cause Courts Act, 1906.	Section 5.

J. M. MACPHERSON,

Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 20th March, 1908:—

No. 3 OF 1908.

A Bill to give greater facilities to the Public for calling for and inspecting Accounts of Public Charities.

WHEREAS it is expedient to give greater facilities to the public for calling for and inspecting accounts of public charities; It is hereby enacted as follows:

1. (1) This Act may be called the Public Charities Accounts Act, 1908.
Short title, extent and commencement.

(2) It extends to the whole of British India, except the Scheduled Districts; and

(3) It shall come into force

2. In the case of any express or constructive trust created for public purposes of a charitable or religious nature, any Court having jurisdiction to try a suit under section 93 of the Code of Civil Procedure, 1908, in respect of such trust, may, on the application of any two or more persons who have an interest in the

trust and have obtained the consent in writing of the Advocate General to the making of such application, by order direct any trustee of such trust to cause to be prepared and filed in the Court within such time as may be specified in the order a detailed account of the receipts and disbursements in connection with the trust property for a period not exceeding three years next preceding the date of the application.

3. A copy of the order signed by the Judge or such officer as he appoints in this behalf and sealed with the seal of the Court shall be served on the trustee in such manner as the Court may direct.

4. Accounts filed in Court in pursuance of an order made under section 2 shall be open to inspection by the public.

5. Where a trustee fails to comply with an order duly made and served under the foregoing provisions, a suit for his removal on the ground of such failure may be instituted in the Court which made the order, and the Court may thereupon pass a decree for his removal unless he can show good cause for the failure.

6. The power conferred by section 2 on the Advocate General may, outside the Presidency-towns, be, with the previous sanction of the Local Government, exercised by the Collector or by such officer as the Local Government may appoint in this behalf.

STATEMENT OF OBJECTS AND REASONS.

THE object of the Bill is to provide a simple procedure which would enable the public to obtain inspection of the accounts of public charities.

There is reason for suspecting that considerable portions of the revenues of these charities are misspent or squandered on useless objects. A regular inspection of accounts by the public would be an effective check upon such malpractices where they exist, and it is highly desirable in the interests of these charities to allow the public every reasonable facility for such inspection.

The Bill does not impose any new duty on trustees of public charities. The law as it stands gives sufficient powers to the Courts to direct accounts when once a suit has been instituted. The duty of keeping proper accounts, however, is not always observed by such trustees, and experience has shown that this duty is likely to be neglected unless the members of the public who are interested in the charity concerned are allowed the means of calling for and inspecting accounts without undertaking the burden of a suit.

The Bill by requiring the previous consent of the Advocate General or some officer specially empowered by the Local Government provides ample safeguard against its provisions being utilized for any indirect or other improper purpose.

RASHBEHARY GHOSE.

The 14th March, 1908.

J. M. MACPHERSON,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 20th March, 1908:—

NO. 4 OF 1908.

THE PRESIDENCY-TOWNS INSOLVENCY BILL.

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(Part I.—Constitution, Procedure and Powers of Court.)

(2) Subject to the provisions of this Act, the Court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

The Presidency-towns Insolvency Bill.

(Part I.—Constitution, Procedure and Powers of Court. Part II.—Proceedings from Act of Insolvency to Discharge.)

(3) Where default is made by a debtor or other person in obeying any order or direction given by the Court or by an official assignee or any other officer of the Court under any power conferred by this Act, the Court may, on the application of the official assignee or other duly authorized person, or of its own motion, order the defaulting debtor or other person to comply with the order or direction so given; and the Court may also, if it thinks fit, upon any such application, make an immediate order for the committal of the defaulting debtor or other person to prison:

Provided that the power given by this subsection shall be deemed to be in addition to, and not in substitution for, any other right or remedy in respect of the default.

Appeals.

8. (1) The Court may review, rescind or vary any order made by it under its insolvency jurisdiction.

(2) Orders in insolvency matters shall, at the instance of any person aggrieved, be subject to appeal as follows:—

- (a) an appeal from an order made by an officer of the Court empowered under section 3 shall lie to the Judge assigned under section 4 for the transaction and disposal of matters in insolvency;
- (b) an appeal from an original order made by a single Judge or Bench consisting of more Judges than one shall lie in the same way and be subject to the same provisions as appeals from orders passed by a single Judge or Bench in exercise of the original civil jurisdiction of the Court.

PART II.**PROCEEDINGS FROM ACT OF INSOLVENCY TO DISCHARGE.***Acts of insolvency.*

9. A debtor commits an act of insolvency in each of the following cases, namely:—

- (a) if, in British India or elsewhere, he makes a transfer of his property to a third person for the benefit of his creditors generally;
- (b) if, in British India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;
- (c) if, in British India or elsewhere, he makes any transfer of his property or of any part thereof, or of any interest therein, which would, under this or any other enactment for the time

being in force, be void as a fraudulent preference if he were adjudged an insolvent;

(d) if, with intent, to defeat or delay his creditors,—

(i) he departs or remains out of British India,

(ii) he departs from his dwelling-house or usual place of business or otherwise absents himself,

(iii) he secludes himself so as to deprive his creditors of the means of communicating with him;

(e) if any of his property has been attached in execution of the decree of any Court for the payment of money;

(f) if he petitions to be adjudged an insolvent;

(g) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts;

(h) if he is imprisoned in execution of the decree of any Court for the payment of money.

Explanation.—For the purposes of this section, the act of an agent may be the act of the principal.

Order of adjudication.

10. Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

Explanation.—The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

11. The Court shall not have jurisdiction to make an order of adjudication, unless—

(a) the debtor is, at the time of the presentation of the insolvency petition, in prison within the local limits of the jurisdiction of the Court in execution of the decree of a Court for the payment of money; or

(b) the debtor, or, if he is a member of a firm, his partner or one of his partners, has, within a year before the date of the presentation of the insolvency petition, ordinarily resided or had a dwelling-house or has carried on business either in person or through an agent within those limits.

*The Presidency-towns Insolvency Bill.**(Part II.—Proceedings from Act of Insolvency to Discharge.)*

12. (1) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

[Ss. 8 and 9: Condition on which creditor may petition against a debtor unless—
S. 46 & 47
Vict. c. 52,
s. 6.
Act III, 1907,
s. 9 (4), (5).]

(a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and

(b) the debt is a liquidated sum payable either immediately or at some certain future time, and

[S. 10.]

(c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.

(2) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent or give an estimate of the value of the security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

13. (1) A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts, and be served in the prescribed manner.

[Ss. 46 & 47 Proceedings ; and
Vict. c. 52, order on creditor's peti-
s. 7. tion.
Act III, 1907,
s. 14.]

(2) At the hearing the Court shall require proof of—

(a) the debt of the petitioning creditor,

(b) the act of insolvency or, if more than one act of insolvency is alleged in the petition, some one of the alleged acts of insolvency, and,

(c) if the debtor does not appear, the service of the petition;

and, if satisfied with the proof, may make an order of adjudication in pursuance of the petition.

(3) If the Court is not satisfied with the proof of the petitioning creditor's debt, or of the act of insolvency or of the service of the petition, or if satisfied by the debtor that he is able to pay his debts, or that for other sufficient cause no order ought to be made, the Court may dismiss the petition.

(4) Where the debtor appears on the petition and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security (if any) being given as the Court may require for payment to the petitioner of any debt which may be established against the debtor in due course of law, and of the costs of establishing the debt,

may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

(5) Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make an order of adjudication on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition on which proceedings have been stayed as aforesaid.

(6) A creditor's petition shall not, after presentation, be withdrawn without the leave of the Court.

14. A debtor shall not be entitled to present Conditions on which an insolvency petition unless— [Act III, 1907, s. 6 (3)]

(a) his debts amount to five hundred rupees, or

(b) he has been arrested and imprisoned in execution of the decree of any Court for the payment of money, or

(c) an order of attachment in execution of such a decree has been made and is subsisting against his property.

15. (1) A debtor's petition shall allege that Proceedings and order the debtor is unable to pay his debts, and, if the debtor proves that he is entitled to present the petition, the Court shall thereupon make an order of adjudication. [S. 5; and
S. 46 & 47
Vict. c. 52,
s. 8.]

(2) If, in the opinion of the Court, the proceedings ought to have been taken before some other Court having jurisdiction under this Act or the Provincial Insolvency Act, 1907, the Court may, if it thinks fit, make an order of adjudication and transfer the proceedings to such other Court, and the order of adjudication shall thereupon have effect as if it had been made by such other Court. III of 1907.

(3) A debtor's petition shall not, after presentation, be withdrawn without the leave of the Court.

16. On the making of an order of adjudication, the property of the insolvent shall thereupon and thereby vest in the official assignee as from the date of the filing of the insolvency petition on which the order is made and shall become divisible among the creditors. The insolvent, if in prison for debt, shall be released, and thereafter, except as provided by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable in insolvency, shall, during the pendency of the insolvency proceedings, have any remedy against the property or person of the insolvent in respect of the debt, or shall commence any suit or other legal proceeding, except with the leave of the Court and on such terms as the Court may impose: [Ss. 7 and 19
and 46 & 47
Vict. c. 52.]

*The Presidency-towns Insolvency Bill.**(Part II.—Proceedings from Act of Insolvency to Discharge.)*

Provided that this section shall not affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this section had not been passed.

[S. 13; and
46 & 47
Vict., c. 52,
10.]

17. (1) The Court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of an insolvency petition and before an order of adjudication is made, appoint the official assignee to be *interim* receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or any part thereof, and the official assignee shall thereupon have such of the powers conferable on a receiver appointed under the Code of Civil Procedure, 1908, as may be prescribed.

V of 1908.

[Cf. s. 49.]

(2) The Court may, at any time after the presentation of an insolvency petition, stay any suit or other proceeding pending before any Judge or Judges of the Court or in any other Court in British India against the property or person of the debtor, and any Court in which proceedings are pending against a debtor may, on proof that an insolvency petition has been presented under this Act by or against a debtor, either stay proceedings or allow them to continue on such terms as it may think just.

[46 & 47
Vict., c. 52,
11.]

18. Where the Court makes an order staying any suit or other legal proceeding, or staying proceedings generally, the order may be served by sending a copy thereof, under the seal of the Court, by registered post to the Court before which the proceeding is pending.

[46 & 47
Vict., c. 52,
12.]

19. (1) If in any case the Court, having regard to the nature of the debtor's estate or business or to the interests of the creditors generally, is of opinion that a special manager of the estate or business other than the official assignee ought to be appointed, the Court may appoint a manager thereof accordingly to act for such time as the Court may authorize, and to have such powers of the official assignee himself as may be entrusted to him by the official assignee or as the Court may direct.

(2) The debtor may be appointed special manager.

(3) The special manager shall give security and furnish accounts in such manner as the official assignee, subject to the control of the Court, may direct, and shall receive such remuneration as the official assignee may, within limits prescribed and subject to that control, determine.

[46 & 47
Vict., c. 52,
20.]

20. Notice of every order of adjudication, stating the name, address and description of the insolvent, the date of the adjudication, the Court by which the adjudication is made and the date of the petition, shall be published in the

Gazette of India and in such other manner as may be prescribed, and the date of the order shall, for the purposes of this Act, be the date of the adjudication.

Annulment of adjudication.

21. (1) Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent are paid in full, or where in some part of British India, or of His Majesty's dominions elsewhere, beyond the local limits of the jurisdiction of the Court, proceedings are pending for the distribution of the estate and effects of the insolvent among his creditors under this Act or under the Bankrupt or Insolvent Laws of that part of His Majesty's dominions, and it appears to the Court that the distribution ought to take place in that part of British India or of His Majesty's dominions elsewhere, the Court may, on the application of any person interested, by order, annul the adjudication.

(2) Where an adjudication is annulled under this section, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the official assignee or other person acting under his authority, or by the Court, shall be valid, but the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such terms and subject to such conditions (if any) as the Court may declare by order.

[Ss. 7 and
11.]

(3) Where a debtor has been released from custody under the provisions of this Act on the making of an order of adjudication and the said order is annulled as aforesaid, it shall be lawful for the Court, if it so thinks fit, to recommit the debtor to his former custody, and the jailor or keeper of the prison to whose custody such debtor shall be so recommitted is hereby required to receive such debtor into his custody according to such recommitment, and thereupon all detainers which were in force against such debtor at the time of such release as aforesaid shall be deemed to be still in force against him as if such order has not been made.

(4) Notice of the order annulling an adjudication shall be published in the Gazette of India and in such other manner as may be prescribed.

(5) For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full, if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court.

[46 & 47
Vict., c. 52,
21.]

*The Presidency-towns Insolvency Bill.**(Part II.—Proceedings from Act of Insolvency in Discharge.)**Proceedings consequent on order of adjudication.*

[Ss. 6 and 12; and 46 & 47 Vict., c. 52, s. 16.]

22. (1) When an order of adjudication is made against a debtor, he shall prepare and submit to the official assignee a schedule of and in relation to his affairs in the prescribed form, verified by affidavit, and showing the particulars of the insolvent's assets, debts and liabilities, the names, residences and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official assignee may require.

(2) The schedule shall be so submitted within the following times, namely:—

- (i) if the order is made on the petition of the debtor, within seven days from the date of the order,
- (ii) if the order is made on the petition of a creditor, within fourteen days from the date of the order.

(3) If the insolvent fails, without reasonable excuse, to comply with the requirements of this section, the Court may, on the application of the official assignee or of any creditor, make an order for his committal to prison.

(4) If the insolvent fails to prepare and submit any such schedule as aforesaid, the official assignee may, at the expense of the estate, cause such a schedule to be prepared in manner prescribed.

[46 & 47 Vict., c. 52, s. 15.]

23. As soon as may be after the making of an adjudication order against an insolvent, a general meeting of his creditors (in this Act referred to as the first meeting of creditors) shall be held for the purpose of considering whether a proposal for a composition or a scheme of arrangement shall be entertained and to consider the circumstances of the insolvency and the insolvent's statement of affairs and his explanation thereof, and generally as to the mode of dealing with the property of the insolvent.

[46 & 47 Vict., c. 52, s. 17.]

24. (1) Where the Court makes an order of adjudication it shall hold a public sitting on a day to be appointed by the Court of which notice shall be given to creditors in the prescribed manner for the examination of the insolvent, and the insolvent shall attend thereat, and shall be examined as to his conduct, dealings and property.

(2) The examination shall be held as soon as conveniently may be after the expiration of the time for the filing of the insolvent's schedule.

(3) The Court may adjourn the examination from time to time.

(4) Any creditor who has tendered a proof or his representative authorised in writing may question the insolvent concerning his affairs and the causes of his failure.

(5) The official assignee shall take part in the examination of the insolvent; and for the purpose thereof, subject to such directions as the Court may give, may employ a solicitor or attorney with or without counsel.

(6) The Court may put such questions to the insolvent as it may think expedient.

(7) The insolvent shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing and shall be read over either to or by the insolvent and signed by him, and may thereafter be used in evidence against him and shall be open to the inspection of any creditor at all reasonable times. [53 & 54 Vict., c. 71, s. 2.]

(8) When the Court is of opinion that the affairs of the insolvent have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but such order shall not be made until after the day appointed for the first meeting of the creditors, and shall not preclude the Court from directing further examination of the insolvent whenever it may deem fit to do so.

(9) Where the insolvent is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the Court makes him unfit to attend his public examination, the Court may make an order dispensing with such examination, or directing that the insolvent be examined on such terms, in such manner, and at such place as to the Court seems expedient. [53 & 54 Vict., c. 71, s. 2.]

Composition and schemes of arrangement.

25. (1) An insolvent may at any time after the making of an order of adjudication submit a proposal for a composition in satisfaction of his debts or a proposal for a scheme of arrangement of his affairs in the prescribed form, and such proposal shall be submitted by the official assignee to a meeting of creditors.

(2) The official assignee shall send to each creditor who is mentioned in the schedule or who has tendered a proof before the meeting a copy of the insolvent's proposals with a report thereon, and if on the consideration of such proposal the majority in number and three-fourths in value of all the creditors whose debts are proved resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors.

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(3) The insolvent may at the meeting amend the terms of his proposal if the amendment is in the opinion of the Court calculated to benefit the general body of creditors.

(4) The insolvent or the official assignee may after the proposal is accepted by the creditors apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.

(5) The application shall not be heard until after the conclusion of the public examination of the debtor. Any creditor who has proved may be heard by the Court in opposition to the application notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal.

(6) The Court shall before approving the proposal hear a report of the official assignee as to the terms thereof and as to the conduct of the debtor and any objections which may be made by or on behalf of any creditor.

(7) Whenever the Court is of opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors or in any case in which the Court is required to refuse the insolvent's discharge, the Court shall refuse to approve the proposal.

(8) If any facts are proved on proof of which the Court would be required either to refuse, suspend or attach conditions to the debtor's discharge, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than six annas in the rupee on all the unsecured debts provable against the debtor's estate.

(9) In any other case the Court may either approve or refuse to approve the proposal.

(10) If the Court approves the proposal, the terms shall be embodied in an order of the Court, the order of adjudication (if any) shall be annulled, and the composition or scheme shall be binding on all the creditors so far as relates to any debts due to them from the insolvent and provable in insolvency.

(11) If default is made in the payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, adjudge the debtor insolvent and annul the composition or scheme, but without prejudice to the validity of any transfer or payment duly made or of anything duly done under or in pursuance of the composition or scheme. When a debtor is adjudged insolvent under this sub-section, all debts provable in other respects which have been contracted before the date of such adjudication shall be provable in the insolvency.

(12) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all

debts directed to be so paid in the distribution of the property of an insolvent.

26. Notwithstanding the acceptance and approval of a composition or scheme, the composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Act, the insolvent would not be discharged by an order of discharge in insolvency, unless the creditor assents to the composition or scheme. [46 & 47
Vict., c. 52,
s. 19.]

Control over person and property of insolvent.

27. (1) Every insolvent shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors and any other meeting which the official assignee may require him to attend, and shall submit to such examination and give such information as the meeting may require. [46 & 47
Vict., c. 52,
s. 24.]

(2) The insolvent shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, wait at such times and places on the official assignee or special manager, execute such powers-of-attorney, conveyances, deeds and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the official assignee or special manager or may be prescribed or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official assignee or special manager, or any creditor or person interested.

(3) The insolvent shall aid, to the utmost of his power, in the realisation of his property and the distribution of the proceeds among his creditors.

(4) If the insolvent—

- (a) wilfully makes false entries in the inventories or lists referred to in sub-section (1), or
- (b) fraudulently or vexatiously conceals, destroys, transfers, removes or refuses to produce any property or books of account, or
- (c) commits any other act of bad faith in the performance of the duties imposed on him by this section,

he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

28. (1) The Court may, either of its own motion or at the instance of the official assignee or of any creditor, by warrant [46 & 47
Vict., c. 52,
s. 25.]

Arrest of debtor under certain circumstances.

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addressed to any police-officer or prescribed officer of the Court, cause a debtor to be arrested, or if in prison to be detained and any books, papers, money and goods in his possession to be seized, and him and them to be safely kept as prescribed until such time as the Court may order, under the following circumstances:—

- (a) if, after presentation of an insolvency petition by or against him, it appears to the Court that there is probable reason for believing that he has absconded or is about to abscond with a view of avoiding service of an insolvency petition or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying or embarrassing proceedings in insolvency against him;
- (b) if, after presentation of an insolvency petition by or against him, it appears to the Court that there is probable reason for believing that he is about to remove his property with a view of preventing or delaying possession being taken of it, by the official assignee, or that there is probable reason for believing that he has concealed or is about to conceal or destroy any of his property or any books, documents or writings which might be of use to his creditors in the course of his bankruptcy;
- (c) if, after service of an insolvency petition on him, he removes any property in his possession above the value of fifty rupees without the leave of the official assignee;
- (d) if, without good cause shown, he fails to attend any examination ordered by the Court or to comply with the requirements of this Act or of any rules.

(2) No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Act relating to fraudulent preferences.

29. Where an order of adjudication is made, the Court, on the application of the official assignee, may, from time to time, order that for such time, not exceeding three months, as the Court thinks fit, post letters addressed to the insolvent at any place or places mentioned in the order for re-direction shall be re-directed, or delivered by the Postal and Telegraph authorities in British India to the official assignee, or otherwise as the Court directs; and the same shall be done accordingly.

30. (1) The Court may, on the application of the official assignee or of any creditor who has proved his debt, at any time after an order of adjudication has been made, summon before it in such manner as may be prescribed the insolvent or any person known or suspected

to have in his possession any property belonging to the insolvent, or supposed to be indebted to the insolvent, or any person whom the Court may deem capable of giving information respecting the insolvent, his dealings or property; and the Court may require any such person to produce any documents in his custody or power relating to the insolvent, his dealings or property.

(2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant, cause him to be apprehended and brought up for examination. [S. 35.]

(3) The Court may examine any person so brought before it concerning the insolvent, his dealings or property.

(4) If on the examination of any such person it appears to the Court that he is indebted to the insolvent, the Court may, on the application of the official assignee, order him to pay to the official assignee, at such time and in such manner as to the Court seems expedient, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Court thinks fit, with or without costs of the examination.

(5) If, on the examination of any such person, it appears to the Court that he has in his possession any property belonging to the insolvent, the Court may, on the application of the official assignee, order him to deliver to the official assignee that property, or any part thereof, at such time, in such manner and on such terms as to the Court may seem just.

Discharge of insolvent.

31. (1) An insolvent may, at any time after the order of adjudication, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but the application shall not be heard until after the public examination of the insolvent has been concluded. The application shall be heard in open Court. [Ss. 47 & 59-61; and 53 & 54 Viet. c. 57.]

(2) On the hearing of the application the Court shall take into consideration a report of the official assignee as to the insolvent's conduct and affairs, and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property:

Provided that the Court shall refuse the discharge in all cases where the insolvent has [Ss. 50 & 51.]

[46 & 47
Vict. c. 58, s.
58.]

[S. 26:
46 & 47
Vict. c. 58, s.
57.]

Discovery of insol-
vent's property.

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XLV of 1860. committed any offence under this Act, or under sections 421 to 424 of the Indian Penal Code, and shall, on proof of any of the facts herein-after mentioned, either refuse the order or suspend the operation of the order for a specified time, or grant an order of discharge subject to such conditions as aforesaid.

(3) The facts hereinbefore referred to are—

(a) that the insolvent's assets are not of a value equal to six annas in the rupee on the amount of his unsecured liabilities, or of such other value as may be prescribed, unless he satisfies the Court that the fact that the assets are not of such value has arisen from circumstances for which he cannot justly be held responsible;

(b) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency;

(c) that the insolvent has continued to trade after knowing himself to be insolvent;

(d) that the insolvent has contracted any debt provable under this Act without having at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it;

(e) that the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;

(f) that the insolvent has brought on or contributed to his insolvency by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs;

(g) that the insolvent has within three months preceding the date of the presentation of the petition, when unable to pay his debts as they become due, given an undue preference to any of his creditors;

(h) that the insolvent has on any previous occasion been adjudged an insolvent or made a composition or arrangement with his creditors;

(i) that the insolvent has concealed or removed his property or any part thereof or has been guilty of any other fraud or fraudulent breach of trust.

(4) For the purposes of this section the report of the official assignee shall be deemed to be

evidence, and the Court may presume the correctness of any statement contained therein.

(5) Notice of the appointment by the Court of the day for hearing the application for discharge shall be published in the prescribed manner and sent one month at least before the day so appointed to each creditor who has proved, and the Court may hear the official assignee and may also hear any creditor. At the hearing the Court may put such questions to the insolvent and receive such evidence as it may think fit.

(6) The Court may, in making an order of discharge, pass a decree against the insolvent in favour of the official assignee for any balance of the debts provable under the insolvency which is not satisfied at the date of his discharge; but in that case the decree shall not be executed without leave of the Court, which leave may be given on proof that the insolvent has since his discharge acquired property or income available for payment of his debts.

(7) A discharged insolvent shall, notwithstanding his discharge, give such assistance as the official assignee may require in the realisation and distribution of such of his property as is vested in the official assignee, and, if he fails to do so, shall be guilty of a contempt of Court; and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done subsequent to the discharge, but before its revocation.

(8) Where the Court refuses the discharge of the insolvent, it may, after such time and in such circumstances as may be authorised by general rules, permit him to renew his application for an order of discharge.

32. In either of the following cases, that is to say:—

(1) in the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or

(2) in the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife);

if the settlor is adjudged insolvent or compounds or arranges with his creditors, and it appears to the Court that the settlement, covenant or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court

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may refuse or suspend an order of discharge or grant an order subject to conditions or refuse to approve a composition or arrangement, as the case may be, in like manner as in cases where the insolvent has been guilty of fraud.

[Ss. 48 & 49; 46 & 47 Vict., c. 52, s. 30; Act III, 1907, s. 45.] 33. (1) An order of discharge shall not release the insolvent from—

- (a) any debt due to the Crown;
- (b) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party; or
- (c) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party.

(2) Save as otherwise provided by sub-section (1), an order of discharge shall release the insolvent from all debts provable in insolvency.

[Ss. 48 & 61; 46 & 47 Vict., c. 52, s. 30.] (3) An order of discharge shall be conclusive evidence of the insolvency, and of the validity of the proceedings therein; and in any proceedings that may be instituted against an insolvent who has obtained an order of discharge in respect of any debt from which he is released by the order, the insolvent may plead that the cause of action occurred before his discharge and may give this Act and the special matter in evidence.

[Ss. 59 & 60.] (4) An order of discharge shall not release any person who at the date of the presentation of the petition was a partner or co-trustee with the insolvent or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

PART III.**ADMINISTRATION OF PROPERTY.***Proof of debts.*

[Ss. 41 & 46 & 47 Vict., c. 52, s. 37; and Act III, 1907, s. 28.] 34. (1) Save as provided by sub-section (2), all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable in insolvency.

(2) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust shall not be provable in insolvency.

[46 & 47 Vict., c. 52, s. 37.] (3) An estimate shall be made by the official assignee of the value of any debt or liability provable as aforesaid which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

(4) Any person aggrieved by any estimate made by the official assignee as aforesaid may appeal to the Court.

(5) If, in the opinion of the Court, the value of the debt or liability is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt or liability shall, for the purposes of this Act, be deemed to be a debt not provable in insolvency.

(6) If, in the opinion of the Court, the value of the debt or liability is capable of being fairly estimated, the Court may direct the value to be assessed before the Court itself, and may give all necessary directions for this purpose, and the amount of the value when assessed shall be deemed to be a debt provable in insolvency.

35. Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively. [46 & 47 Vict., c. 52, s. 38; Act III, 1907, s. 30.]

Mutual dealings and set-off.

36. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the first schedule, the rules in that schedule shall be observed. [46 & 47 Vict., c. 52, s. 39.]

37. (1) In the distribution of the property of the insolvent there shall be paid in priority to all other debts— [Ss. 41 & 46 & 47 Vict., c. 52, s. 37; and Act III, 1907, s. 33.]

(a) all debts due to the Crown or to any local authority; and

(b) all salary or wages of any clerk, servant or labourer in respect of services rendered to the insolvent during six months before the date of the presentation of the petition, not exceeding five hundred rupees for each such clerk, servant or labourer. [S. 41.]

(2) The debts specified in sub-section (1) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them.

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(4) In the case of partners the partnership property shall be applicable in the first instance in payment of the partnership debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property; and where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.

(5) Subject to the provisions of this Act, all debts proved in insolvency shall be paid rateably according to the amounts of such debts respectively and without any preference.

(6) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts proved in insolvency.

[S. 22; Cf. Act III of 1907, s. 42.]

38. After an adjudication order has been made no distress for rent due before such order shall be made upon the goods and effects of the insolvent, but the landlord or party to whom the rent should be due shall be entitled to prove in respect of such rent so due as aforesaid and to receive a dividend in respect of the said rent and shall not, unless the petition of such insolvent be dismissed or the adjudication be reversed, be entitled to distrain for the said rent.

Property available for payment of debts.

[S. 7; Act III of 1907, s. 16 (4).]

39. The insolvency of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to and to commence at the date of the presentation of the petition on which the order of adjudication is made.

[46 & 47 Vict. c. 44.]

40. (1) The property of the insolvent divisible amongst his creditors, and in this Act referred to as the property of the insolvent, shall not comprise such particulars (not being books of account) as are exempted by any enactment for the time being in force from liability to attachment and sale in execution of a decree.

(2) But it shall comprise the following particulars:—

[S. 7.]

(a) all such property as may belong to or be vested in the insolvent at the commencement of the insolvency or may be acquired by or devolve on him before his discharge;

(b) the capacity to exercise and to take proceedings for exercising all such powers

in or over or in respect of property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge; and

(c) all goods being at the commencement of the insolvency in the possession, order or disposition of the insolvent, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof. [S. 23.]

Effect of insolvency on antecedent transactions.

41. (1) Where execution of a decree has been issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the official assignee, except in respect of assets realised in the course of the execution by sale or otherwise before the date of the presentation of the petition on which the order of adjudication is made. [Cf. Act XIV of 1883, s. 295; 46 & 47 Vict. c. 45, s. 45; Act III, 1907, s. 34.]

(2) Nothing in this section shall affect the rights of a secured creditor in respect of property against which a decree is executed.

(3) A person who in good faith purchases the property of a debtor under a sale in execution, shall in all cases acquire a good title to it against the official assignee.

42. Where execution of a decree has been issued against any property of a debtor which is saleable in execution, before the sale thereof notice is given to the Court executing the decree that a petition has been presented against the debtor, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the official assignee, but the costs of the execution shall be a first charge on the property so delivered, and the official assignee may sell the property or an adequate part thereof for the purpose of satisfying the charge. [53 & 54 Vict. c. 71, s. 11; Act III, 1907, s. 35.]

43. Any transfer of property not being a transfer made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the receiver and may be annulled by the Court.

44. (1) Every transfer of property or of any interest therein, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor,

[S. 24; 46 & 47 Vict. c. 46, s. 47; Act III, 1907, s. 37(1).]

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with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the receiver and shall be annulled by the Court.

(2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the insolvent.

[46 & 47
Vict., c. 52,
s. 49;
Act III, 1907,
s. 38.] **45.** Subject to the foregoing provisions of this Act with respect to the effect of insolvency on an execution and with respect to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate in the case of an insolvency—

- (a) any payment by the insolvent to any of his creditors;
- (b) any payment or delivery to the insolvent;
- (c) any transfer by the insolvent for valuable consideration; or
- (d) any contract or dealing by or with the insolvent for valuable consideration:

Provided that any such transaction takes place before the date of the presentment of the petition on which the order of adjudication is made and that the person with whom such transaction takes place has not at the time notice of any available act of insolvency committed by the insolvent.

Realisation of property.

[S. 31; 46 & 47
Vict., c. 52, s. 50.] **46.** (1) The official assignee shall, as soon as may be, take possession of the deeds, books and documents of the insolvent and all other parts of his property capable of manual delivery.

(2) The official assignee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the insolvent, be in the same position as if he were a receiver of the property appointed under the Code of Civil Procedure, 1908, and shall have such of the powers conferable on a receiver under that Code as may be prescribed; and the Court may on his application enforce such acquisition or retention accordingly.

[S. 25.] (3) Where any part of the property of the insolvent consists of stock, shares in ships, shares or any other property transferable in the books of any company, office or person, the official assignee may exercise the right to transfer the property to the same extent as the insolvent might have exercised it if he had not become insolvent.

(4) Where any part of the property of the insolvent consists of things in action, such

things shall be deemed to have been duly assigned to the official assignee.

(5) Any treasurer or other officer, or any banker, attorney or agent of an insolvent, shall pay and deliver to the official assignee all money and securities in his possession or power, as such officer, banker, attorney or agent, which he is not by law entitled to retain as against the insolvent or the official assignee. If he fails so to do, he shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the official assignee.

47. Any person acting under warrant of the Court may seize any part of the property of an insolvent in the custody or possession of the insolvent or of any other person, and with a view to such seizure may break open any house, building or room of the insolvent where the insolvent is supposed to be, or any building or receptacle of the insolvent where any of his property is supposed to be; and, where the Court is satisfied that there is reason to believe that property of the insolvent is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search-warrant to any police officer or officer of the Court, who may execute it according to its tenor.

48. (1) Where an insolvent is an officer of the Army or Navy or of His Majesty's Royal Indian Marine Service, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the official assignee shall receive for distribution amongst the creditors so much of the insolvent's pay or salary as, subject to the provisions of section 60 of the Code of Civil Procedure, 1908, the Court may, by order under that Code, direct.

(2) Where an insolvent is in the receipt of a salary or income other than as aforesaid, the Court may, at any time after adjudication and from time to time, subject to the provisions of section 60 of the said Code and of the Pensions Act, 1871, make such order as it thinks just for the payment of the salary or income, or of any part thereof, to the official assignee, for distribution among the creditors.

(3) Nothing in this section shall take away or abridge any power of the chief officer of any public department to dismiss an insolvent.

49. The property of the insolvent shall pass from official assignee to official assignee, and shall vest in the official assignee for the time being during his continuance in office, without any conveyance, assignment or transfer whatever.

*The Presidency-towns Insolvency Bill.**(Part III.—Administration of Property.)*647 Vict.,
§ 55.]

50. (1) Where any part of the property of an insolvent shall consist of any leasehold interest burdened with onerous covenants, of shares or stocks in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its hindering the possessor thereof to the performance of any onerous act or to the payment of any sum of money, it shall be lawful for the official assignee, notwithstanding that he may have endeavoured to sell or have taken possession of the property, or exercised any act of ownership in relation thereto, but subject always to the provisions of this section, by writing signed by him, at any time within six months after the insolvent shall have been adjudged insolvent to disclaim the property:

Provided that, where any such property shall not have come to the knowledge of the official assignee within one month after such adjudication as aforesaid, it shall be lawful for him to disclaim the property at any time within six months after he shall first have become aware thereof.

(2) The disclaimer shall operate to determine, as from the date thereof, the rights, interests and liabilities of the insolvent-debtor and his property in or in respect of the property disclaimed, and shall also discharge the official assignee from all personal liability in respect of the property disclaimed as from the date when the property shall have vested in him, but shall not, except so far as is necessary for the purpose of releasing the insolvent and his property and the official assignee from liability, affect the rights or liabilities of any other person.

(3) Subject always to such rules as may be made in this behalf, the official assignee shall not be entitled to disclaim any leasehold interest without the leave of the Court; and it shall be lawful for the Court, before or on granting such leave, to require such notices to be given to persons interested, and to impose such terms as a condition of granting leave, and to make such orders with respect to fixtures, tenant's improvements and other matters arising out of the tenancy, as the Court shall think just.

(4) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the insolvent to the amount of the injury, and may accordingly prove the same as a debt under the insolvency.

51. Subject to the provisions of this Act, the official assignee shall, with all convenient speed, realise the property of the insolvent, and for that purpose may—

(a) sell all or any part of the property of the insolvent;

(b) give receipts for any money received by him;

and may, by leave of the Court, do all or any of the following things, namely:—

(c) carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same;

(d) institute, defend or continue any suit or other legal proceeding relating to the property of the insolvent; [S. 29.]

(e) employ a pleader or other agent to take any proceedings or do any business which may be sanctioned by the Court;

(f) accept as the consideration for the sale of any property of the insolvent a sum of money payable at a future time on fully paid shares or debenture stock in any limited company subject to such stipulations as to security and otherwise as the Court thinks fit;

(g) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts or for the purpose of carrying on the business;

(h) refer any dispute to arbitration, and compromise all debts, claims and liabilities, on such terms as may be agreed upon; [S. 28.]

(i) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold:

Provided that the Court may, upon the application of any insolvent or of the official assignee, or of any creditor or mortgagee of the insolvent, delay or postpone the sale or distribution of any property and make such other order regarding the same as it shall think fit.

Distribution of property.

52. (1) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the official assignee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts. [S. 41: 46 & 47 Vict. c. 52, s. 58.]

(2) The first dividend (if any) shall be declared and be distributed within six months after the adjudication, unless the official assignee satisfies the Court that there is sufficient reason for postponing the declaration to a later date.

(3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and be payable at intervals of not more than six months.

(4) Before declaring a dividend, the official assignee shall cause notice of his intention to do

47 Vict.,
s. 56;
1907,
realisation.

*The Presidency-towns Insolvency Bill.**(Part III.—Administration of Property.)*

so to be published in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the insolvent's schedule who has not proved his debt.

(5) When the official assignee has declared a dividend he shall send to each creditor who has proved a notice showing the amount of the dividend, and when and how it is payable, and if required by any creditor a statement in the prescribed form as to the particulars of the estate.

53. (1) Where one member of a partnership is adjudged insolvent, a creditor to whom the insolvent is indebted jointly with the other members of the partnership or any of them shall not receive any dividend out of the separate property of the insolvent until all the separate creditors have received the full amount of their respective debts.

(2) Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Court on the application of the official assignee or any person interested, be declared together; and the expenses of and incident to those dividends shall be fairly apportioned by the official assignee between the joint and separate properties, regard being had to the work done for and to the benefit received by each property.

54. (1) In the calculation of dividends, the official assignee shall retain in his hands sufficient assets to meet—

- (a) debts provable in insolvency and appearing from the insolvent's statements or otherwise to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to tender their proofs;
- (b) debts provable in insolvency the subject of claims not yet determined;
- (c) disputed proofs or claims; and
- (d) the expenses necessary for the administration of the estate or otherwise.

(2) Subject to the provisions of sub-section (1), all money in hand shall be distributed as dividends.

55. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the official assignee any dividend or dividends which he may have

failed to receive, before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

56. When the official assignee has realised all the property of the insolvent, or so much thereof as

can, in his opinion, be realised without needlessly protracting the proceedings in insolvency, he shall, with the leave of the Court, declare a final dividend; but, before so doing, he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him, but not proved that, if they do not prove their claims, to the satisfaction of the Court, within the time limited by the notice, he will proceed to make a final dividend, without regard to their claims. After the expiration of the time so limited, or, if the Court on application by any such claimant grants him further time for establishing his claim, then on the expiration of that further time, the property of the insolvent shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

57. No suit for a dividend shall lie against the official assignee, but, where the official assignee refuses to pay any dividend, the Court may, on the application of any creditor who has proved his debt, order him to pay it, and also to pay out of his own money interest thereon at such rate as may be prescribed for the time that it is withheld, and the costs of the application.

58. (1) Subject to such conditions and limitations as may be prescribed, the official assignee may appoint the insolvent himself to superintend the management of the property of the insolvent or of any part thereof, or to carry on the trade (if any) of the insolvent for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the official assignee may direct.

(2) Subject as aforesaid, the official assignee may, from time to time, make such allowance as he thinks just to the insolvent out of his property for the support of the insolvent and his family, or in consideration of his services, if he is engaged in winding up his estate, but any such allowance may at any time be varied or determined by the official assignee.

59. The insolvent shall be entitled to any surplus plus remaining after payment in full of his creditors, with interest, as provided

*The Presidency-towns Insolvency Bill.**(Part IV.—Official Assignees.)*

by this Act and of the expenses of the proceedings taken thereunder.

PART IV.**OFFICIAL ASSIGNEES.***Appointment and removal.*

14.] 60. (1) The Chief Justice of each of the High Courts of Judicature at Fort William, Madras and Bombay, and the Chief Judge of the Court of Lower Burma, may from time to time appoint such person as he thinks fit to the office of official assignee of insolvents' estates for each of the said Courts respectively, and may, with the concurrence of a majority of other Judges of the Court, remove the person for the time being holding that office for any cause appearing to the Court sufficient.

15.] (2) Every official assignee shall give such security and shall be subject to such rules and shall act in such manner as may be prescribed.

(3) Notwithstanding anything in sub-section (1), the persons substantively or temporarily holding the office of official assignee immediately before the commencement of this Act in the Courts for the relief of Insolvent Debtors at Calcutta, Madras and Bombay under the Indian Insolvency Act, 1848, and in the Chief Court of Lower Burma under that Statute as applied by the Lower Burma Courts Act, 1900, shall, without further appointment for that purpose, become the official assignees, substantive or temporary, as the case may be, under this Act in the High Courts at Fort William, Madras and Bombay and in the Chief Court of Lower Burma, respectively.

(4) When an official assignee is removed, dies or resigns, all estates, rights and powers vested in him shall without any transfer vest in the official assignee who may be appointed in his place.

Duties.

47 52. 61. (1) The duties of an official assignee shall have relation both to the conduct of the insolvent and to the administration of his estate.

(2) An official assignee may, for the purpose of affidavits verifying proofs, petitions or other proceedings under this Act, administer oaths.

47 52. 62. As regards the insolvent it shall be the duty of the official assignee—

(a) to investigate the conduct of the insolvent and to report to the Court, upon any application for discharge, stating whether

there is reason to believe that the insolvent has committed any act which constitutes an offence under this Act or under sections 421 to 424 of the Indian Penal Code or which would justify the Court in refusing, suspending or qualifying an order for his discharge;

XLV of 1860.

(b) to make such other reports concerning the conduct of the insolvent as the Court may direct or as may be prescribed;

(c) to take such part as may be directed by the Court in the public examination of the insolvent; and

(d) to take such part and give such assistance in relation to the prosecution of any fraudulent insolvent as the Court may direct or as may be prescribed.

63. (1) As regards the estate of an insolvent it shall be the duty of the official assignee as to insolvent's estate—

46 & 47
Vict., c. 52,
s. 70.]

(a) where a special manager has not been appointed, to act as manager of the insolvent's estate;

(b) to authorise the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary so to do;

(c) to preside at meetings of creditors;

(d) to report to the creditors as to any proposal which the insolvent has made with respect to the mode of liquidating his affairs.

(2) The official assignee shall account to the Court and pay over all moneys and deal with all securities in such manner as, subject to the provisions of this Act, the Court, from time to time, directs.

64. The official assignee shall, whenever required by any creditor so to do, and on payment by the creditor of the prescribed fee, furnish and send to the creditor by post a list of the creditors showing in the list the amount of the debt due to each of the creditors.

46 & 47
Vict., c. 52,
s. 79.]

Remuneration.

65. (1) The remuneration to be paid to the official assignee shall be fixed by rules.

53, s. 46]
47; Vict., c. 52, s. 72.]

(2) No remuneration whatever beyond that referred to in sub-section (1) shall be received by an official assignee as such.

Misfeasance.

66. The Court shall call the official assignee to account for any misfeasance, neglect or omission which may appear in his accounts or otherwise.

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wise, and may require the official assignee to make good any loss which the estate of the insolvent may have sustained by reason of the misfeasance, neglect or omission.

Official name.

[46 & 47
Act, c. 52,
s. 83.] 67. The official assignee may sue and be sued by the name of "the official assignee to and by the name of the property of an insolvent," inserting the name of the insolvent, and by that name may hold property of every description, make contracts, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

Vacation of office on insolvency.

[46 & 47
Act, c. 52,
s. 85.] 68. If an order of adjudication is made against an official assignee, he shall thereby vacate the office of official assignee.

Control.

[46 & 47
Act, c. 52,
s. 89.] 69. (1) Subject to the provisions of this Act and to the directions of the Court, the official assignee shall, in the administration of the property of the insolvent and in the distribution thereof amongst his creditors, have regard to any resolution that may be passed by the creditors at a meeting.

(2) The official assignee may, from time to time, summon meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution at any meeting or the Court may direct, or whenever requested in writing to do so by one-fourth in value of the creditors.

(3) The official assignee may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the insolvency.

(4) Subject to the provisions of this Act, the official assignee shall use his own discretion in the management of the estate and its distribution among the creditors.

70. If the insolvent or any of the creditors, or any other person, is aggrieved by any act or decision of the official assignee, he may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just.

71. (1) In the event of any official assignee not faithfully performing his duties and duly observing all the requirements imposed on him by any enactment, rules or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the Court by any creditor in regard thereto, the Court shall enquire into the matter and take such action thereon as may be deemed expedient.

(2) The Court may at any time require any official assignee to answer any enquiry made by it in relation to any insolvency in which he is engaged, and may examine him or any other person on oath concerning the insolvency.

(3) The Court may also direct a local investigation to be made of the books and vouchers of the official assignee.

PART V.

COMMITTEE OF INSPECTION.

72. (1) The Court may, if it so thinks fit, authorise the creditors to appoint from among the creditors or holders of general proxies or general powers-of-attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the official assignee.

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(Part V.—Committee of Inspection. Part VI.—Procedure.)

73. The committee shall have such powers of ^{Control of commit- tee of inspection or, official assignee.} control over the proceeding of the official assignee as may be prescribed.

PART VI.

PROCEDURE.

6 & 47
c. 52, s. 105.] 74. (r) Subject to the provisions of this Act and to rules, the costs of and incidental to any proceeding in Court under this Act shall be in the discretion of the Court.

(2) The Court may at any time adjourn any proceedings before it upon such terms, if any, as it thinks fit to impose.

(3) The Court may at any time amend any written process or proceeding under this Act upon such terms, if any, as it thinks fit to impose.

(4) Where by this Act or by rules the time for doing any act or thing is limited, the Court may extend the time either before or after the expiration thereof, upon such terms, if any, as the Court thinks fit to impose.

(5) The Court may in any matter take the whole or any part of the evidence either *viva voce* or by interrogatories, or upon affidavit, or by commission.

(6) For the purpose of approving a composition or scheme by joint debtors the Court may, if it thinks fit, and on the report of the official assignee that it is expedient so to do, dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

47
c. 52, s. 111, 1907.] 75. Where two or more insolvency petitions are presented against the same debtor or against joint debtors, the Court may consolidate the proceedings or any of them, on such terms as the Court thinks fit.

76. Where the petitioner does not proceed <sup>[45 & 47
Vict., c. 52,
s. 107;
Act III, 1907,
s. 9.]</sup> with due diligence on his carriage of proceedings, petition, the Court may substitute as petitioner any other creditor to whom the debtor is indebted in the amount required by this Act in the case of a petitioning creditor or may give the carriage of the proceedings to the official assignee.

77. If a debtor by or against whom an <sup>[46 & 47
Vict., c. 52,
s. 108;
Act III, 1907,
s. 10.]</sup> insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

78. The Court may, at any time, for sufficient <sup>[46 & 47
Vict., c. 52,
s. 109.]</sup> reason, make an order staying the proceedings under an insolvency petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court thinks just.

79. Any creditor whose debt is sufficient to <sup>[45 & 47
Vict., c. 52,
s. 110.]</sup> entitle him to present an insolvency petition against all the partners of a firm may present a petition against any one or more partners of the firm without including the others.

80. Where there are more respondents than <sup>[46 & 47
Vict., c. 52,
s. 111.]</sup> one to a petition, the Court may dismiss the petition as to one or more of them without prejudice to the effect of the petition as against the other or others of them.

81. Where an order of adjudication has been <sup>[46 & 47
Vict., c. 52,
s. 112.]</sup> made on an insolvency petition against or by one member of a partnership, any other insolvency petition against or by a member of the same partnership shall be presented in or transferred to the Court in which the first-mentioned petition is in course of prosecution; and the Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

82. Where a member of a partnership is ad- <sup>[46 & 47
Vict., c. 52,
s. 113.]</sup> judged insolvent, the Court may authorise the official assignee to continue or commence and carry on any suit or other proceeding in his name and that of the insolvent's partner; and any release by the partner of the debt or demand to which the proceeding relates shall be void; but notice of the

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(Part VI.—Procedure. Part VII.—Penalties. Part VIII.—Small Insolvencies.
Part IX.—Special Provisions.)

application for authority to continue or commence the proceeding shall be given to him, and he may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the proceeding, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the Court directs.

[46 & 47
Vict. c. 52.
s. 124.] 83. Where an insolvent is a contractor in respect of any contract jointly with any other person, that other person may sue or be sued in respect of the contract without the joinder of the insolvent.

[46 & 47
Vict. c. 52.
s. 115.] 84. Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm: but in that case the Court may, on application by any person interested, order the names of the persons who are partners in the firm, or the name of the person carrying on business under a partnership name, to be disclosed in such manner, and verified on oath or otherwise, as the Court may direct.

PART VII.

PENALTIES.

[Act 1907, s. 53.
(1).] 85. An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

[S. 50.] 86. In case it shall appear to the Court that any insolvent has fraudulently, with the intent to conceal the state of his affairs or to defeat the objects of this Act, destroyed or otherwise wilfully prevented or purposely withheld the production of any book, paper or writing relating to such of his affairs as are subject to investigation under this Act, or kept or caused to be kept false books, or made false entries in, or withheld entries from, or wilfully altered or falsified, any such book, paper or writing, or that such insolvent has fraudulently, with intent of diminishing the sum to be divided among his creditors or of giving an undue preference to any of the said creditors, discharged or concealed any debt due to or from the said insolvent, or made away with, changed,

mortgaged or concealed any part of his property, of what kind soever,

the Court shall have power to adjudge that the insolvent shall be imprisoned for a period or periods not exceeding two years in the whole, as the Court shall direct, and to declare him entitled to his discharge as aforesaid at the expiration of the term of imprisonment to which he shall be sentenced, and by warrant under the seal of the Court to order him to be arrested and committed to prison, and there to be detained accordingly.

87. Where the Court has reason to believe that an insolvent or any other person has committed an offence under this Act or under sections 421 to 424 of the Indian Penal Code, the Court, after making any preliminary enquiry that may be necessary, may send the case for inquiry or trial to a Magistrate, and may send the accused in custody or take sufficient security for his appearance before such Magistrate, and may bind over any person to appear and give evidence on such trial.

PART VIII.

SMALL INSOLVENCIES.

88. When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise, or the official assignee reports to the Court, that the property of the debtor is not likely to exceed in value three thousand rupees or such other amount as may be prescribed, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications, namely:—

- (a) no appeal shall lie from any order of the Court, except by leave of the Court;
- (b) the estate shall, where practicable, be distributed in a single dividend;
- (c) such other modifications may be made in the provisions of this Act as may be prescribed with the view of saving expense and simplifying procedure:

Provided that nothing in this section shall permit the modification of the provisions of this Act relating to the examination or discharge of the debtor.

PART IX.

SPECIAL PROVISIONS.

89. No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force.

*The Presidency-towns Insolvency Bill.**(Part IX.—Special Provisions. Part X.—Rules.)*

[46 & 47
Vict., c. 52,
s. 125.]

90. (1) Any creditor of a deceased debtor in whose debt would have been sufficient to support an insolvency petition against the debtor, had he been alive, may present to the Court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor according to the law of insolvency.

(2) Upon the prescribed notice being given to the executor, administrator or other legal representative of the deceased debtor, the Court may in the prescribed manner, upon proof of the petitioner's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in insolvency of the deceased debtor's estate, or may upon cause shown dismiss the petition with or without costs.

(3) An order of administration under this section shall not, in cases where a grant of probate or administration is required to establish a title as legal representative, be made until the expiration of two months from the date of the grant of probate or letters of administration, unless with the concurrence of the legal representative of the deceased debtor, or unless the petitioner proves to the satisfaction of the Court that the debtor committed an act of insolvency within three months prior to his decease.

(4) A petition for administration under this section shall not be presented to the Court after proceedings have been commenced in any Court of Justice for the administration of the deceased debtor's estate; but that Court may in that case, on the application of any creditor, and on proof that the estate is insufficient to pay its debts, transfer the proceedings to the Court exercising jurisdiction in insolvency, and thereupon the last-mentioned Court may, in the prescribed manner, make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

(5) Upon an order being made for the administration of a deceased debtor's estate under this section, the property of the debtor shall vest in the official assignee of the Court, and he shall forthwith proceed to realize and distribute the same in accordance with the provisions of this Act.

(6) With the modifications hereinafter mentioned, all the provisions of Part III, relating to the administration of the property of an insolvent, shall, so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Act.

(7) In the administration of the property of the deceased debtor under an order of administration, the official assignee shall have regard to any claims by the legal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate; and those claims shall be deemed a preferential debt under the order, and be payable in full, out of the debtor's estate, in priority to all other debts.

(8) If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the official assignee after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of insolvency, such surplus shall be paid over to the legal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

(9) Notice to the legal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after the notice no payment or transfer of property made by the legal representative shall operate as a discharge to him as between himself and the official assignee. Save as aforesaid, nothing in this section shall invalidate any payment made or act or thing done in good faith by the legal representative before the date of the order for administration.

(10) General rules, for carrying into effect the provisions of this section, may be made in the same manner and to the like effect and extent as in insolvency.

Explanation.—For the purposes of this section, the expression "Court" shall, unless there is anything repugnant in the subject or context, be deemed to mean the Court exercising jurisdiction in insolvency within the local limits of the jurisdiction of which the debtor resided or carried on business for the greater part of the six months immediately prior to his decease; and "creditor" means one or more creditors qualified to present an insolvency petition as in this Act provided.

PART X.

RULES.

91. (1) The Courts having jurisdiction under this Act may from time to time make rules for carrying into effect the objects of this Act. [S. 76.]

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for and regulate—

(a) the fees and percentages to be charged for or in respect of proceedings under this Act and the manner in which the same are to be collected and accounted

*The Presidency-towns Insolvency Bill.**(Part X.—Rules. Part XI.—Supplemental.)*

for and the account to which they are to be paid ;

- (b) the investment, whether separately or collectively, of unclaimed deposits and dividends appertaining to the estates of insolvent debtors whether adjudicated insolvent under this or any former Act, and the application of the proceeds of such investment ;
- (c) the proceedings of the official assignee in taking possession of and realising the estates of insolvent debtors ;
- (d) the remuneration of the official assignee ;
- (e) the receipts, payments and accounts of official assignees ;
- (f) the audit of the accounts of official assignees and the payment of the costs of such audit and the payment of the recoverable costs, charges and allowances of official assignees out of the funds in their hands ;
- (g) the proceedings to be taken in connection with proposals for composition and schemes of arrangement with the creditors of insolvent debtors ;
- (h) the intervention of the official assignee at the hearing of applications and matters relating to insolvent debtors and their estates ;
- (i) the examination by the official assignee of the books and papers of account of undischarged insolvent debtors ;
- (j) the service of notices in proceedings under this Act ;
- (k) the meetings of creditors ;
- (l) the appointment, meetings and procedure of committees of inspection ;
- (m) the conduct of proceedings under this Act in the name of a partnership ;
- (n) the delegation to an officer of the Court of any of the powers of the Court under this Act ;
- (o) the prescription of forms ;
- (p) the procedure to be followed in the case of estates to be administered in a summary manner ;
- (q) the practice generally of Courts for the relief of insolvent debtors.

92. Rules made under the provisions of this Part shall be subject, in the case of the High Court of Judicature at Fort William in Bengal, to the previous sanction of the Governor General in Council, and, in the case of any other Court, of the Local Government, and when made and sanctioned as aforesaid shall be published in the Gazette of India or in the local official Gazette, as the case may be, and shall thereupon have the same force and effect within the local limits of the jurisdiction of the Court which made them as if they had been enacted in this Act.

PART XI.

SUPPLEMENTAL.

Exemption from duty.

93. No conveyance, assignment, letter of attorney, affidavit, certificate, or other proceedings, instrument or writings whatsoever, before or under any order of any Court acting under this Act, nor any copy thereof, nor any advertisement inserted in any newspaper by direction of any such Court relating to matters within the jurisdiction of such Court, shall be liable to or chargeable or charged with the payment of any stamp or other duty whatsoever ;

and no sale of any real or personal estate of any such insolvent for the benefit of his or her creditors under this Act shall be liable to any auction duty.

Evidence.

94. (i) A minute of proceedings at a meeting of creditors under this Act, signed at the same or the next ensuing meeting by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof. [46 & 47 Vict., c. 52, s. 133.]

(2) Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat to have been duly passed or had.

95. Any affidavit may be used in a Court having jurisdiction under this Act if it is sworn— [S. 68; 46 & 47 Vict., c. 52, s. 135; Act XIV, 1882, s. 197.]

(a) in British India, before—

- (i) any Court or Magistrate,
- (ii) any officer whom the High Court of a province may appoint in this behalf, or
- (iii) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf ;

(b) in England, before any person authorised to administer oaths in His Majesty's High Court of Justice, or in the Court of Chancery of the County Palatine of Lancaster, or before any Registrar of a Bankruptcy Court, or before any officer of a Bankruptcy Court authorised in writing in that behalf by the Judge of the Court ;

*The Presidency-towns Insolvency Bill.**(Part XI.—Supplemental.)*

(c) in Scotland or in Ireland, before a Judge Ordinary, Magistrate or Justice of the Peace; and,

(d) in any other place, before a Magistrate or Justice of the Peace or other person qualified to administer oaths in that place (he being certified to be a Magistrate or Justice of the Peace, or qualified as aforesaid, by a British Minister or British Consul or British Political Agent or by a notary public).

Formal defects.

[46 & 47
Vict., c. 52,
s. 143.] 96. (1) No proceeding in insolvency shall be invalidated by any formal defect or by any irregularity unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court.

(2) No defect or irregularity in the appointment of an official assignee shall vitiate any act done by him in good faith.

[46 & 47
Vict., c. 52,
s. 143.] 97. Where an insolvent is a trustee within the Indian Trustee Act, 1866, section 35 of that Act shall have effect so as to authorise the appointment of a new trustee in substitution for the insolvent (whether voluntarily resigning or not), if it appears expedient to do so, and all provisions of that Act, and of any other Act relative thereto, shall have effect accordingly.

Crown.

[46 & 47
Vict., c. 52,
s. 143.] 98. Save as herein provided, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of discharge shall bind the Crown.

Rights of audience.

[46 & 47
Vict., c. 52,
s. 143.] 99. Nothing in this Act, or in any transfer of jurisdiction effected thereby, shall take away or affect any right of audience that any person may have had immediately before the commencement of this Act; and all attorneys or other persons who had the right of audience before the Courts for the Relief of Insolvent Debtors shall have the like right of audience in insolvency matters in the High Courts of Judicature at Fort William, Madras and Bombay, respectively, and in the Chief Court of Lower Burma.

Unclaimed funds or dividends.

100. Where an official assignee under any insolvency, composition or scheme pursuant to this Act has under his control any unclaimed dividend which has remained unclaimed for more than six months, or where, after making a final dividend, he has in his hands or under his control any unclaimed or undistributed money arising from the property of the debtor, or where, after the passing of this Act, any unclaimed or undistributed fund or dividend in the hands or under the control of an official assignee under the Indian Insolvency Act, 1848, has remained or remains unclaimed or undistributed for six months after the same became claimable or distributable, or in any other case for two years after the receipt thereof by the official assignee, the official assignee shall forthwith pay it into the Court for credit to such account as may be prescribed.

101. Moneys transferred to the credit of any general dividend account which are not paid within fifteen years or such less period as may be prescribed from the date of their transfer to that account shall be carried to the account and credit of the Government of India, unless the Court, on the motion of a person interested, otherwise directs.

102. Any person claiming to be entitled to any moneys paid into court pursuant to section 100, or carried to the account and credit of the Government of India pursuant to section 101, may apply to the Court for an order for payment to him of the same; and the Court, if satisfied that the person claiming is entitled, shall make an order for payment to him of the sum due;

Provided that, before making an order for the payment of a sum which has been carried to the account and credit of the Government of India, the Court shall cause a notice to be served on such officer as the Governor General in Council may appoint in this behalf, calling on the officer to show cause, within one month from the date of the service of the notice, why the order should not be made.

103. (1) Where in the books of the official assignee of the Court for the Relief of Insolvent Debtors at Calcutta, Madras or Bombay, or of the Chief Court of Lower Burma, a dividend in respect of the claim of a person who has been named in a schedule as a creditor of an insolvent in proceedings under the Indian Insolvency Act, 1848, [Act XXVII of 1841, ss. 1, 2.]

Distribution of certain unclaimed dividends reserved in respect of unproved claims under 11 & 12 Vict., c. 21.

11 & 12
Vict., c. 21.

*The Presidency-towns Insolvency Bill.**(Part XI.—Supplemental. The First Schedule.—
Proof of Debts.)*

but has not established his title to the dividend, has been standing to the credit of the estate of the insolvent for a longer period than six years from the date of the declaration of the dividend, the official assignee of the High Court of Judicature at Fort William, Madras or Bombay, or of the Chief Court of Lower Burma, as the case may be, shall, at the prescribed time and in the prescribed form, file an account of it in Court, and publish the account in two successive issues of the local official Gazette.

(2) If the dividend is not claimed within six months from the date of the second publication of the account in the Gazette, it shall, after deduction therefrom of the cost of preparing, filing and publishing the account, be divided rateably among the creditors of the estate who have proved their debts or demands.

Debtor's books.

[Bankruptcy. Rules, 1883, Rule 349.] 104. (1) No person shall, as against the official Assignee, be entitled to withhold possession of the books of accounts belonging to the insolvent or to set up any lien thereon.

[New.] (2) Any creditor of the insolvent may, subject to the control of the Court, inspect at all reasonable times, personally or by agent, any such books in the possession of the official assignee.

Courts to be auxiliary to each other.

[46 & 47 Vict., c. 52, s. 118; Act III, 1907, s. 50.] 105. All Courts having jurisdiction in insolvency and the officers of such Courts respectively shall severally act in aid of and be auxiliary to each other in all matters of insolvency, and an order of a Court seeking aid with a request to another of the said Courts shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by the order, such jurisdiction as either of such Courts could exercise in regard to similar matters within their respective jurisdictions.

Repeals.

[46 & 47 Vict., c. 52, s. 169.] 106. The enactments mentioned in the second schedule are hereby repealed to the extent specified in the fourth column thereof.

THE FIRST SCHEDULE.*(See section 36.)***PROOF OF DEBTS.***Proofs in ordinary cases.*

[46 & 47 Vict., c. 52, s. 11.] 1. Every creditor shall prove his debt as soon as may be after the making of an order of adjudication.

2. A debt may be proved by delivering or sending by post in a registered letter to the official assignee an affidavit verifying the debt.

3. The affidavit may be made by the creditor himself or by some person authorised by or on behalf of the creditor. If made by a person so authorised, it shall state his authority and means of knowledge.

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The official assignee may at any time call for the production of the vouchers.

5. The affidavit shall state whether the creditor is or is not a secured creditor.

6. A creditor shall bear the cost of proving his debt unless the Court otherwise specially orders.

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors at all reasonable times.

8. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

Proof by secured creditors.

9. If a secured creditor realises his security, he may prove for the balance due to him, after deducting the net amount realised.

10. If a secured creditor surrenders his security to the official assignee for the general benefit of the creditors, he may prove for his whole debt.

11. If a secured creditor does not either realise or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

12. (1) Where a security is so valued the official assignee may at any time redeem it on payment to the creditor of the assessed value.

(2) If the official assignee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the official assignee, or as, in default of agreement, the Court may direct. If the sale is by public auction, the creditor, or the official assignee on behalf of the estate, may bid or purchase:

*The Presidency-towns Insolvency Bill.**(The First Schedule.—Proof of Debts.)*

Provided that the creditor may at any time, by notice in writing, require the official assignee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realised, and if the official assignee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the official assignee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the official assignee, or the Court, that the valuation and proof were made *bona fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order, unless the official assignee shall allow the amendment without application to the Court.

14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he has received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money for the time being available for dividend any dividend or share of dividend which he has failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

15. If a creditor after having valued his security subsequently realises it, or if it is realised under the provisions of rule 12, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

16. If a secured creditor does not comply with the foregoing rules he shall be excluded from all share in any dividend.

17. Subject to the provisions of rule 12, a creditor shall in no case receive more than sixteen annas in the rupee and interest as provided by this Act.

Proof in respect of distinct contracts.

18. If an insolvent was at the date of the order of adjudication liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor and also as member of a

firm, the circumstance that the firms are in whole or in part composed of the same individuals or that the sole contractor is also one of the joint contractors shall not prevent proof in respect of the contracts against the properties respectively liable on the contracts.

Periodical payments.

19. When any rent or other payment falls due at stated periods, and the order of adjudication is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

Interest.

20. (1) On any debt or sum certain whereon interest is not reserved or agreed for, and which is overdue when the debtor is adjudged an insolvent, and which is provable under this Act, the creditor may prove for interest at a rate not exceeding six per centum per annum—

(a) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication; or,

(b) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication.

(2) Where a debt which has been proved in [Act III, 1907] insolvency includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

Debt payable at a future time.

21. A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting therefrom only a rebate of interest at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

*The Presidency-towns Insolvency Bill.**(The First Schedule.—Proof of Debts. The Second Schedule.—Enactments Repealed.)**Admission or rejection of proofs.*

22. The official assignee shall examine every proof and the grounds of the debt, and in writing admit or reject it in whole or in part, or require further evidence in support of it. If he rejects a proof, he shall state in writing to the creditor the grounds of the rejection.

23. If the official assignee thinks that a proof has been improperly admitted, the Court may, on the application of the official assignee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

24. If a creditor is dissatisfied with the decision of the official assignee in respect of a proof, the Court may, on the application of the creditor, reverse or vary the decision.

25. The Court may also expunge or reduce a proof upon the application of a creditor if the official assignee declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the insolvent.

26. For the purpose of any of his duties in relation to proofs, the official assignee may administer oaths and take affidavits.

THE SECOND SCHEDULE.

(See section 106.)

ENACTMENTS REPEALED.

Year.	No.	Short title.	Extent of repeal.
1841	XXVII	The Insolvent Estates (Unclaimed Dividends) Act, 1841.	So much as has not been repealed.
1848	11 & 12 Vict., c. 21.	The Indian Insolvency Act, 1848.	Ditto.
1898	X	The Indian Insolvency Rules Act, 1898.	Sections 2 and 3.
1908	V	The Code of Civil Procedure, 1908.	Section 120, subsection (7).

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to amend the Law of Insolvency in force in the Presidency-towns and in the town of Rangoon. That law is at present contained in the Indian Insolvency Act of 1848 (11 & 12 Vict., c. 21), a statute framed on the same lines as the English Acts before 1869. Those Acts were long since found inadequate in England; they were superseded by the Bankruptcy Act of 1869 and the law was again recast and re-enacted by the existing Act of 1883. In India, however, no amendment has been made, although for many years past it has been generally admitted that the present Act is altogether out of date and ineffective.

2. As long ago as 1870 Sir James Stephen introduced a Bill to repeal the existing law and to substitute for it an Insolvency Law based on the English Bankruptcy Act of 1869. This Bill was applicable to the whole of India. It was considered to be too complicated for the Mufassal, and was withdrawn. In 1883 the present Bankruptcy Act was passed in England and Sir C. Ilbert proposed to the Government of India to introduce a Bill, based on the lines of that Act, to supersede the Statute of 1848. The proposal to pass an entirely new enactment met with general approval. It was supported by the various Chambers of Commerce and by the High Courts, accepted by the Government of India and approved by the Secretary of State. A Bill was drafted accordingly and was introduced in the Legislative Council at Simla on the 20th May, 1886. This Bill followed with some exactness the English Act and contained provisions taken from that Act which were commonly thought to go somewhat beyond the needs of India. For some reason it was not immediately proceeded with; indeed, no further step was taken until 1899, when the Bill was referred to a Select Committee, who reported that as drafted it was too complicated to suit Indian conditions and advised that it should be modified. Nothing has been done since.

3. Meantime the commercial communities have not ceased to urge reform. In 1902, in commenting on the Code of Civil Procedure Bill, the Bengal Chamber of Commerce expressed their disappointment that no indication of any intended amendment of the Insolvency Law in the Presidency-towns was put forward. They observed that the necessity for a new law was increasing and that in the public interests, and particularly in the interests of the trading community, the desired amendment should not be longer delayed. Within the last year they have made a similar representation, and it cannot be doubted that their opinion is shared by the Chartered High Courts and by the representatives of commerce in the other Presidency-towns. In the last session of the Legislative Council an Act was passed dealing with insolvency in the Mufassal on modern lines, but that Act has no application to the Presidency-towns or to Rangoon.

4. The main defect of the existing law lies in the absence of any adequate powers to compel the production of assets. The primary object of the Act of 1848 was the protection of debtors: the provision it makes for the discovery of the property of insolvents is treated as of secondary importance and has long since been found insufficient to prevent fraud. The protection of honest debtors should be one of the objects of every Insolvency Law, although it is of less importance now than it was in 1848, when imprisonment for debt was more frequent. But it is equally important, in the interests of commerce, that creditors should not be defrauded and that dishonest debtors should not be able to make use of insolvency proceedings merely to free themselves from their liabilities while preserving their assets more or less intact.

5. The present Bill follows the general lines of the English Act, but there are important simplifications introduced to meet the different conditions of India. It continues the existing protection for debtors but, at the same time, sets up a machinery by which the whole of the assets of an insolvent should be secured for the benefit of the creditors. The details of this machinery are for consideration, but it is thought that there will be general agreement as to the desirability of a new law on the lines of the Bill.

6. The first point of substance to which it is desired to invite attention is the question of the stage at which there should be adjudication. Under the Act of 1848 adjudication takes place on the presentation of a petition. The Bill of 1886, following the English law, provided for a receiving order in the first instance, but the Committee of 1892 reported that the interposition of a receiving order, with all the legal and other complications attendant on it, between the presentation of a petition and adjudication was undesirable. This view has been adopted in the present draft; there is no provision in it for any receiving order,—adjudication is to be made, as under the existing law, on petition. This adjudication will be made as of course on all debtors' petitions and all creditors' petitions which are dropped. The Provincial Insolvency Act proceeds on an alternative

course and provides for adjudication after a hearing of the petition at which the creditors may appear and cross-examine the debtor. The conditions in the Presidency-towns, however, differ from those in the Mufassal and there is less danger of adjudication being made on insufficient materials.

7. The second stage under the Bill will be a meeting of the creditors and a public examination of the debtor by the Court. These two provisions should enable the creditors to obtain full information as to the dealings of the insolvent and the assets of his estate.

8. The third and last stage will be the discharge. This cannot be granted until after the public examination of the insolvent has been concluded and may be refused or suspended if the insolvent is found to have been guilty of misconduct. An order of adjudication operates of itself to release the debtor from prison; it is no longer necessary therefore to retain the provisions of the present Act relating to applications for personal discharge.

9. Provisions have been made for compositions and schemes of arrangement which are, it is hoped, of a practical character.

10. The distinction between traders and non-traders has been abolished.

11. Under the Act there is power to appoint special assignees, but it is believed that this power has never in fact been exercised in recent years. The object of it is to secure for the creditors some control over the proceedings in insolvency, but the fact that it is not made use of appears to show that it is ineffective for that purpose. It is proposed therefore, for consideration, that the power to appoint special assignees should not be retained, but that there should be power to appoint a committee of creditors to supervise proceedings in cases in which it may be desirable to do so. This procedure is new to Indian law and for that reason it seems inexpedient, in the first instance, to define with any exactness the extent of the control which should be given to such committees. It is thought better to leave the matter to rules, in order that advantage may be taken of experience.

12. Under the English system the supervising authority for bankruptcy proceedings is the Board of Trade, but in India we have nothing corresponding to that body; powers of supervision must therefore be left to the Courts.

13. An explanation of other amendments will be found in the *Notes on Clauses*.

14. If this Bill be passed into law it will be necessary to repeal the 1848 Act, and this raises a question which deserves consideration. The present Act is an Act of the Imperial Parliament and a vesting order made under it vests in the assignee by direct operation all the real and personal estate and effects of the insolvent in whatever part of the King's dominions they may be situate or accrue; and a discharge under the Act has effect in every part of those dominions. The Act is one of those which it is within the competency of the Legislative Council of the Governor General to repeal, but if it be repealed and an Indian Act be substituted, it follows that these advantages must at least for the most part be abandoned, since an Act of the Indian Legislature cannot operate for this purpose outside the limits of India. In 1886 it was proposed that an Act of the Imperial Parliament should be obtained to give this authority to insolvency proceedings in India, but no such Act has as yet been passed. It is believed, however, that the advantages conferred by the Act of 1848 are of no real value, since experience has shown that in practically every case in which there are assets in both countries concurrent proceedings are instituted in England and in India. It may be that the Imperial Parliament will, at some future date, pass an enactment to give direct effect to Indian and Colonial insolvency proceedings in all parts of the Empire, but meantime it would appear that we are not surrendering any practical advantage by giving up the position we hold under the 1848 Act. In any case we cannot allow this consideration to be a perpetual bar to the reform of Insolvency Law in India.

The 19th March, 1908.

H. ERLE RICHARDS.

Notes on Clauses.

Clauses 1 and 2.—The title and definitions have been brought into line with the Provincial Insolvency Act.

The Bill is to all practical intents a Bankruptcy Bill, but it has been thought better for the present, at any rate, to observe the title "insolvency" with which legal practitioners in this country are familiar, both for this Bill and for the Provincial Act.

Clauses 3 and 4 represent the existing law.

Clauses 5 and 6.—These clauses give powers which it is thought will be useful; they are taken from the English Act.

Clause 7 (1) gives the Court in the exercise of insolvency jurisdiction the same powers as it has in the exercise of original civil jurisdiction.

Sub-clauses (2) and (3) are taken from the English Act.

Clause 8.—The law of appeals remains unaltered.

Clause 9.—The list of acts of insolvency has been made uniform with that in the Provincial Act and follows the English law, with one exception. It is proposed that a debtor who has allowed his property to be attached should be held to have committed an act of insolvency. It is said that one of the most favourite tricks of a fraudulent insolvent is to get rid of his property to special creditors or friends by illusive decrees or attachments and that the property once sold in this way is difficult to recover. The point is for consideration, but it may well be that it is possible to be more strict in this respect in the Presidency-towns than in the Mufassal.

Clauses 10 to 16 follow the Provincial Act and make no change of importance in the law except that to which attention has already been called, namely, that under clause 16 the adjudication of itself releases the debtor from prison. Section 13 of the Act of 1848 has been omitted for the reasons already stated.

Clause 19.—The power to appoint a special manager is one that has been suggested in connection with the Arbuthnot case.

Clause 23 provides for a general meeting of creditors to be held after the adjudication. The proceedings at the meeting will be regulated by rules. Express power has been given to the official assignee or to creditors to question the insolvent. Clause 69, sub-clause (2), gives power to the official assignee to summon subsequent meetings of creditors at any time, and compels him to do so if directed by the Court or requested in writing by one-fourth of the creditors.

Clause 24 provides for the public examination of an insolvent to which reference has already been made.

Clauses 25 and 26 deal with composition and schemes of arrangement.

Clause 27 is taken from the English Act; it sets out in full the duty of the insolvent to discover and realise his property, and empowers the Court to sentence a fraudulent insolvent to a term of imprisonment, following section 50 of the 1848 Act and section 43 (2) of Act III of 1907.

Clause 28 gives the Court power of arrest in certain circumstances.

Clause 30 gives the official assignee wider powers for the discovery of the insolvent's property. It enables the Court to order production of the books of a partnership of which the insolvent was a member—a point on which there has been some doubt.

Sub-clauses (4) and (5) go somewhat beyond the corresponding sections of the Bankruptcy Act, 1883, sections 27 (4) and (5), under which the Court can only make an order when the respondent admits liability; but having regard to the facility with which in this country property can be put away, and to the fact that between examination and action the property might be made away with, it seems necessary to have a stringent provision.

Clause 31.—The system of double discharge has been abandoned and provision is made for one discharge only; the clause is in line with the corresponding section of the Provincial Act.

It is for consideration whether the limit of six annas in the rupee prescribed in sub-clause (3) (a) is not too high. In small insolvencies at least it might be desirable to reduce it. Power is therefore given to the Court to prescribe a lower limit.

Clause 33 differs from the Provincial Act inasmuch as it makes a discharge operate to free a debtor from all debts provable in insolvency. But in this it follows the existing law as to traders, and the objections to giving this wide effect to a discharge which exist in regard to the Mufassal do not have the same weight in Presidency-towns where greater publicity attaches to proceedings before the Court.

Clause 33.—It is a question whether there should be inserted after this clause a new clause disqualifying an insolvent from holding office on the lines of the corresponding provisions in the English Act. This was proposed but not adopted at the time in the Provincial Insolvency Act. It may be that it will be better that this disqualification should be inserted as opportunity offers in enactments relating to public bodies.

Clause 36.—Rules as to proof of debts have been put in the schedule following the English Act.

Clause 39.—The title of the assignee is made to relate back to presentation of the petition and not to the date of the act of insolvency. This follows the existing law and

the Provincial Act, but differs from the English Act under which the title relates back to the act of insolvency.

Clauses 41 to 45.—The provisions as to the effect of insolvency on antecedent transactions follow generally the English law. The transactions referred to in clauses 41, 42 and 43 are made to stand or fall by the time of the presentation of the petition, not of adjudication, a departure from the Provincial Insolvency Act which makes the law somewhat more stringent. The limit of time within which salary or wages of clerks, servants, etc., can be recovered has been maintained at six months as in section 46 of the Act of 1848, but a limit of amount in each case of Rs. 500 is suggested.

Clauses 46 to 52 are taken from the English law and the Provincial Act.

Clause 50 is shorter than the corresponding section (55) of the English Act.

Clauses 56 to 68 sum up the position of the official assignee; the present incumbents are preserved in their office.

Clauses 74 to 84 deal with matters of procedure and are taken from the English law. The last clause gives powers for proceedings to be taken either by or against a firm in the firm's name.

Part VII: penalties: clauses 85, 87.—It appears necessary to retain section 50 of the present Act. Non-criminal failure to maintain proper books is dealt with sufficiently by clause 31 (3) (b) by suspension or refusal of discharge; the other penal sections of the present Act appear to be sufficiently covered by sections 421 to 424 of the Penal Code.

Clause 88.—It is thought that a power to summarily administer small cases will be of use.

Special provisions.—The sections of the existing Act as to married women and lunatics have been omitted. They appear to be unnecessary.

Clause 90 provides for the administration in insolvency of the estate of a person dying insolvent and is new to Indian law; it reproduces section 125 of the Act of 1883.

The Arbutnot insolvency afforded a striking example of the necessity of this provision.

Clauses 91 and 92 give power to the Courts to make rules subject to the sanction, in the case of the Calcutta High Court of the Governor General in Council, and, in the case of the other High Courts, of the Local Governments. The provision for submitting rules for the approval of His Majesty is omitted.

It is thought that this power will enable Courts, if they so think fit, to re-enact in substance the existing rules, with such changes as may be rendered necessary by the Act. *Clause 91 (2) (b)* gives the Court an unlimited power of dealing with the proceeds of investments of unclaimed dividends.

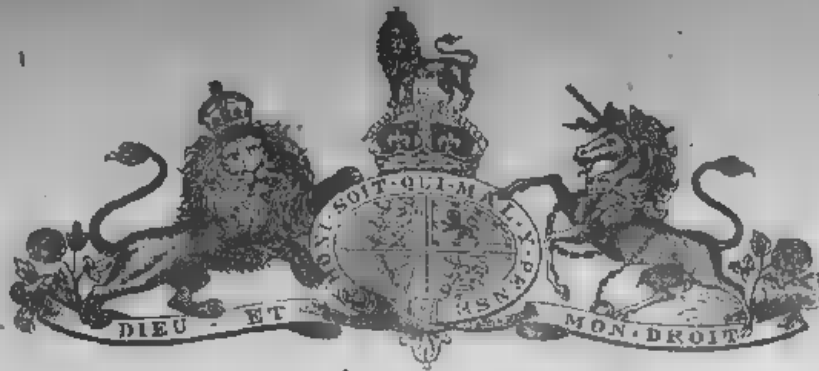
Clause 95 provides for the persons before whom affidavits may be sworn; section 68 of the 1848 Act is altogether obsolete on this point.

Clauses 100 to 103 provide for dealing with unclaimed funds or dividends, on the lines of Act II of 1874, sections 62, 63.

Schedule I, as to proof of debts, is taken from Schedule II of the English Act of 1883.

J. M. MACPHERSON,

Secretary to the Government of India.



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Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced in the Council of the Governor General of India for making Laws and Regulations, Reports of Select Committees presented to the Council, and Bills published under Rule 23.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 8th June, 1908 :

No. 5 OF 1908.

A Bill to make special provision for the payment of duty on salt in certain cases.

WHEREAS it is expedient to make special provision for the payment of duty on salt in certain cases; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Salt-Short title and extent. duties Act, 190 ; and

(2) It extends to the whole of British India.

2. Where by any enactment any duty is im-

posed on any salt manu-
factured in or imported
into or transported with-
in British India, the Governor General in Coun-
cil or the Local Government may, by notification
in the official Gazette, make rules providing for
the payment of such duty within a period not
exceeding six months from the date on which
payment is due, and for the furnishing of secu-
rity for such payment; and salt may be manu-
factured, imported or transported in accordance
with rules so made as if the duty payable there-
on had been paid.

STATEMENT OF OBJECTS AND REASONS.

UNDER the credit system for the payment of duty on salt which prevails in Madras and Bombay, salt is issued to merchants without requiring them to make immediate payment of the duty; the procedure being that they execute a bond and deposit securities and that their accounts are made up and settled periodically. The Salt Committee of 1904 recommended that a similar system should be adopted in the areas of Bengal in which there is no water communication; and the Governments of Bengal and Eastern Bengal and Assam have expressed themselves in favour of its introduction.

2. In Madras and Bombay the system has been found of value in facilitating the distribution of salt and in reducing its price to the consumer. The Government of India consider therefore that its extension to other parts of India is desirable. They do not propose to restrict it to the areas contemplated by the Salt Committee, but would allow any Local Government to adopt the credit system within its territories, and to make the necessary rules and conditions. The present Bill has been framed to permit of this.

The 28th May 1908.

E. N. BAKER.

J. M. MACPHERSON,

Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 8th June, 1908:

No. 6 OF 1908.

A Bill to amend the Local Authorities Loan Act, 1904.

WHEREAS it is expedient to amend the Local Authorities Loan Act, 1904; It is hereby enacted as follows:—

1. This Act may be called the Local Authorities Loan (Amendment) Act, 1908.

Short title.

2. In section 2 of the Local Authorities Loan Act, 1904, for the words "bills repayable" the words "bills or promissory notes payable" shall be substituted; and in the proviso to the same section, after the word "bills" the words "or promissory notes" shall be inserted.

Amendment of section 2, Act III, 1904.

STATEMENT OF OBJECTS AND REASONS.

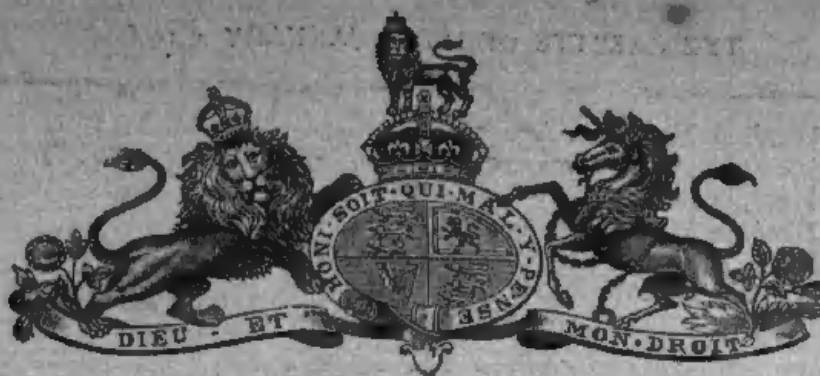
THE Local Authorities Loan Act, 1904 (III of 1904), enables certain local authorities to borrow money by means of the issue of short-term bills. In practice it has been found that the documents on which local authorities raise such loans are promissory notes in form; and it is doubtful whether the bodies concerned are in a position to give "bills" in the ordinary banking and mercantile sense of the term. It is accordingly proposed to remove all ambiguity by providing that the local authorities to whom the Act applies may give promissory notes as security for short loans.

The 12th May 1908.

E. N. BAKER.

J. M. MACPHERSON,

Secretary to the Government of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 4, 1908.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART VI.

Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,
ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS
UNDER THE PROVISIONS OF THE INDIAN COUNCILS ACTS,
1861 AND 1892 (24 & 25 VICT., C. 67,
AND 55 & 56 VICT., C. 14).

The Council met at Government House, Calcutta, on Friday, the 3rd January,
1908.

PRESENT:

His Excellency the Earl of Minto, P.C., G.C.M.G., G.M.S.I., G.M.I.E., Viceroy
and Governor General of India, *presiding*.
His Honour Sir Andrew Fraser, K.C.S.I., Lieutenant-Governor of Bengal.
His Excellency General Viscount Kitchener of Khartoum, G.C.B., O.M.,
G.C.M.G., G.C.I.E., Commander-in-Chief in India.
The Hon'ble Mr. H. Erle Richards, K.C.
The Hon'ble Mr. E. N. Baker, C.S.I.
The Hon'ble Major-General C. H. Scott, C.B., R.A.
The Hon'ble Sir Harvey Adamson, Kt. C.S.I.
The Hon'ble Mr. J. F. Finlay, C.S.I.
The Hon'ble Mr. J. O. Miller, C.S.I.
The Hon'ble Sir Rameshwara Singh, K.C.I.E., Maharaja Bahadur of
Darbhanga.
The Hon'ble Munshi Madho Lal.
The Hon'ble Mr. Gangadhar Rao Madhav Chitnavis, C.I.E.
The Hon'ble Mr. H. W. W. Reynolds.
The Hon'ble Mr. F. A. Slacke, C.S.I.
The Hon'ble Mr. H. A. Sim, C.I.E.
The Hon'ble Tikka Sahib Ripudaman Singh of Nabha.
The Hon'ble Dr. Rashbehary Ghose, C.I.E., D.L.
The Hon'ble Mr. Gopal Krishna Gokhale, C.I.E.

The Hon'ble Mr. A. A. Apcar, C.S.I.
 The Hon'ble Mr. S. Ismay, C.S.I.
 The Hon'ble Maung-Bah-Too, K.S.M.
 The Hon'ble Mr. W. W. Drew.
 The Hon'ble Nawab Saiyid Muhammad Sahib Bahadur.
 The Hon'ble Mr. W. R. H. Merk, C.S.I.

NEW MEMBERS.

The Hon'ble MR. APCAR, the Hon'ble MR. ISMAY, the Hon'ble MAUNG-BAH-TOO, the Hon'ble MR. DREW, the Hon'ble NAWAB SAIYID MUHAMMAD SAHIB BAHADUR, and the Hon'ble MR. MERK took their seats as Additional Members of Council.

LEGAL PRACTITIONERS (AMENDMENT) BILL.

The Hon'ble SIR HARVEY ADAMSON moved that the Bill further to amend the Legal Practitioners Act, 1879, be taken into consideration.

The motion was put and agreed to.

The Hon'ble SIR HARVEY ADAMSON moved that the Bill be passed.

The motion was put and agreed to.

INDIAN LIMITATION BILL.

The Hon'ble MR. ERLE RICHARDS said:—"My Lord, the title of the Bill which I now ask leave to introduce appears to be somewhat ambitious. It is the 'Indian Limitation Act', and it might be assumed from that title that this Council was to be asked to embark on a general amendment of the Law of Limitation. I desire at the outset to make it clear that there is no such intention. The Bill is intended primarily to remedy a hardship caused by a recent decision of the Privy Council to which I will return in a moment; to make some amendments ancillary to the Code of Civil Procedure Bill which is now before this Council and which, it is hoped, will be shortly passed into law; and in addition to amalgamate in one enactment the various Acts through which the law is at present scattered. For the rest the amendments are, as is believed, of an unimportant character directed solely to clearing up points as to which there exists a conflict between the various High Courts. The Bill makes no other changes in the law.

"For some years past there has been a difference of opinion as to the period of time within which suits to enforce payment of money secured by mortgages other than English mortgages might be brought: some High Courts have held that the period was sixty years and that the case was governed by Article 147; other High Courts have held that Article 132 applied and that the time was twelve years. The result has been that the law has differed in different Provinces: in some Provinces the sixty years' rule prevailed: in others twelve years was the time allowed. The Privy Council have now decided that the latter view is correct and that the period of limitation for suits of this character all over India is twelve years and no more. This result has caused considerable hardship in the territories within which the sixty years' rule had prevailed. Suits for the enforcement of mortgages which before the decision of the Privy Council would have been within time, have been and must be dismissed by Courts on the ground that they are barred by limitation: and claims under a still larger number of mortgages have become unenforceable owing to the construction now put upon the Statute. Mortgagees relied and were entitled to rely on the view of the law taken by the High Courts of their respective Provinces, and it does not seem fair that they should lose their rights merely because that view has now turned out to be incorrect. The Government of India are of opinion that some provision should be made to meet these cases and the Bill accordingly proposes that suits in the Provinces in which the sixty

years' rule prevailed, may be brought within two years from the passing of the Bill: it also provides for the continuance of pending suits and for the restoration of suits which have been dismissed on the ground of limitation since the date of the Privy Council decision.

"Further amendments, my Lord, are required, as I have said, to make the law of limitation conform to the new proposals in regard to civil procedure. The two Statutes are to some extent interwoven and it is not possible to amend the one without making necessary some amendments in the other. Such of these amendments as are matters of substance have been recommended either by the Select Committee of 1903 or by the Special Committee of 1907 and have been already discussed in connection with the Code of Civil Procedure Bill. Some objection has been taken to the definition of 'moveable property', a definition recommended by the Select Committee of 1903, and that objection will be carefully considered. The other amendments of substance are not, as is thought, of a contentious character. Beyond these, the changes are mere matters of form.

"Another class of amendments is that necessitated by differences entertained by various High Courts as to the construction of the present Act. I have already made reference to one difference which the Privy Council have now finally determined, but there are other cases in which similar conflicts exist, conflicts which may result in the same sort of hardship. It seems most desirable to take an early opportunity of ending these conflicts by legislation. It is believed that the amendments required raise no general questions of importance.

"Other changes in the existing periods of limitation have been suggested to the Government of India but have been rejected on the ground that they raise questions of principle and for that reason, even if beneficial in themselves, are not within the scope of this Bill; such for instance are proposals for the reduction of the period of limitation now given by Articles 145, 146 and 147 of the existing Act. The tendency of modern legislation is beyond doubt to shorten the time of limitation and on general principles that is a result to be desired. But in India we must proceed slowly: changes of the law in these respects are apt to create hardship and in many matters, especially in those relating to land, Western legislation is not a safe precedent for India. Moreover we have in this as in other questions to take into account the great difference in practice in the various Provinces. It has been suggested for instance that the period of 60 years allowed under the existing law for suits for redemption should be curtailed and that, following English law, one uniform period should be enacted for all mortgage suits: a suggestion which has the support of high authority. But it is clear that in India any such change would have far-reaching results and that however desirable in some Provinces it would be altogether opposed to the habits of the people in others. This is an illustration of the sort of difference to which I have referred. I mention these matters in passing, because they have been the subject of some discussion in connection with the present Bill, but they are not material to the motion before the Council; for the Bill is intended to be restricted and will, I think, be found to be restricted to minor amendments for the most part of a non-contentious character.

"My Lord, if the amendments to which I have called attention were alone in print this Bill would be of small dimensions but it has been thought desirable to take this opportunity of reprinting the present Limitation Act with the amendments which have been made in it from time to time by the Legislature since 1877 and those now proposed. There are no less than eleven amending Acts already on the Statute-book, and it is from every point of view desirable to substitute one enactment for the twelve, or if this Bill were passed in the form of an amending Bill only, for the thirteen, in which the law would otherwise be contained. Our Statute-book, if I may use that expression for convenience though it is not accurate in fact, is full of amending Acts: there are some 350 Acts of general application and of these about 120 are amending Acts, many of them making but trifling changes, altering a few words or perhaps a clause or two. The result is that our collection of Statutes has become confused and complicated, and that it is increasingly difficult for those

who have to refer to it to find the law with accuracy. The Government of India from time to time issue copies of Acts as amended up to date, but these copies have no authority and the amending volumes are themselves the sources of some confusion. It seems desirable therefore, when opportunity offers, to consolidate Acts, that is, to reprint them as amended, repealing the amending Acts in the manner proposed in the present case and so to simplify the Statute-book. 'Consolidation' is a long word, but in this connection it means reprinting and nothing more.

"A draft Bill containing the amendments now before this Council and some others put forward for discussion but not adopted, was circulated to Local Governments and others some two months since; but owing to a misunderstanding which has only recently come to my notice an altogether insufficient interval was allowed for replies. I have to express my regrets to those consulted that this was so. These criticisms with which we are favoured on our legislative proposals are of the utmost value and it would be most unwise for this Council to pass any Act such as this until it had been sufficiently discussed. The Bill as now before this Council is not, as I have said, of a contentious character, but adequate opportunity for discussion must be given before it is passed into law."

The motion was put and agreed to.

The Hon'ble MR. ERLE RICHARDS introduced the Bill.

The Hon'ble MR. ERLE RICHARDS moved that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in the Gazette of India in English and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The motion was put and agreed to.

INDIAN TARIFF (AMENDMENT) BILL.

The Hon'ble MR. BAKER moved for leave to introduce a Bill further to amend the Indian Tariff Act, 1894. He said:—"The object of this Bill is to give effect to the recommendation of the Excise Commission that the import duty on imported beer and the excise duty on beer made in India should be raised from one anna to two annas a gallon. The present rates have never been altered since they were imposed in 1863 and 1890, respectively. They do not act as a check on consumption. In 1889 the imports were about 3 million gallons, while the breweries in the country turned out about 5 millions. Last year these amounts had risen to about 5 millions and nearly 6 millions, respectively. The Excise Committee found that beer drinking by the native population was on the increase in Madras and Bangalore, and probably also in Burma, and that a commencement of such consumption had recently been observed in parts of Northern India and in Sind. Moreover, beer which is valued at more than Re. 1-4 a gallon, when taxed at one anna a gallon, pays less in proportion to its value than it would do under the ordinary tariff rate of 5 per cent. *ad valorem*. This preferential treatment of alcoholic liquors cannot be defended.

"The Bill raises the tariff rate on imported beer to two annas a gallon. The excise-duty will be raised to a similar figure by Local Governments under their Excise laws.

"I may add that under the term 'beer' I include the other liquors which are classed with it in Schedule III of the Tariff Act, namely, ale and porter, cider and other fermented liquors."

The motion was put and agreed to.

The Hon'ble MR. BAKER introduced the Bill.

The Hon'ble MR. BAKER moved His Excellency the President to suspend the Rules for the conduct of business to enable the Bill to be passed at the